

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, NOVEMBER 13, 1997

Chairman Ludwig called the meeting to order at 1:30 p.m. at the Shilo Inn, Ocean Shores, Washington.

MEMBERS PRESENT: CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY, MARSHALL FORREST, and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE; SENATOR RAY SCHOW, and REPRESENTATIVE RUTH FISHER

OTHERS PRESENT: BEN BISHOP, Executive Director;
CARRIE TELLEFSON, Division Director, Policy, Planning and
Support;
SHERRI WINSLOW, Division Director, Field Operations;
CALLY CASS-HEALY, Division Director, Licensing Operations;
DERRY FRIES, Division Director, Special Operations;
JACKI FISCHER, Program Manager, Financial Investigations Unit;
JONATHAN McCOY, Assistant Attorney General; and
SUSAN GREEN, Executive Assistant

Chairman Ludwig introduced the Washington State Gambling Commission (WSGC) staff and Commission members present.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

Commissioner McLaughlin moved that the Commission approve the new licenses, changes, withdrawals, and tribal certifications. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with five aye votes.*

REVIEW OF FRIDAY'S AGENDA

Carrie Tellefson said tomorrow there will be no staff reports, but there are a number of rules up for final action. One significant package is the Gambling Services Supplier Rules, which creates a new license class for those who provide services and advice, etc., to gambling operators. There is a petition by James Williams to amend the raffle rules regarding discounted raffle ticket schemes. There are three license fee increase rules and the staff will be recommending tomorrow that they be implemented later in the year on June 30, 1998, rather than on January 1. For discussion, there is the petition by Dennis Zaborac to change the rules with respect to merchandise prizes for pull tabs. There are a couple of public card room employees rules that go along with the house banked card room test and a few housekeeping rules having to do with bingo gift certificates and record keeping. There is one rule up for discussion and possible filing, a repealer of the prohibition on operating at different marketing levels. The purpose of bringing this forward is to get the issue before the Commission and have some substantive discussion on it. Also on the agenda will be a discussion that was started last month on the Commission meeting schedule and the number of times the Commission meets and length of meetings. The WCCGA would like to make a presentation tomorrow on their 1998 legislative proposals.

MANUFACTURER REVIEW

AUTOMATED RESOURCES GROUP, Inc.

Ms. Fischer said this company has submitted an application as a manufacturer of keno equipment for sale in the state of Washington. The corporation was first formed in 1991 and is located in Lincoln, Nebraska. The sole owner and president is Gary D. Whiteman, and Suzanne McMasters, his wife, is the secretary of the corporation. Their registered agent is Karen Louise Richwood of Federal Way. Agents Leonard Junk and Artis Collins of the Financial Investigations Unit conducted the financial background investigation at ARG headquarters August 18-22, 1997. During their investigation, the agents examined the applicants' personal and criminal histories. They also verified the corporation's ownership and reviewed the company's financial records. The agents contacted regulatory authorities in Nebraska, Arizona, and South Dakota. New Mexico has no regulatory requirements at this time. In addition to reviewing the financial records, the agents also reviewed the applicants' manufacturing processes and evaluated the keno system to ensure compliance. Their investigation of the financial documents revealed no unusual or adverse evidence that would preclude their company from qualifying for a license. Based on this investigation, staff recommends limited licensure of this company as a manufacturer of keno equipment.

Commissioner Forrest moved to approve the license application of this corporation; **Commissioner McLaughlin** seconded the motion. **Chairman Ludwig** pointed out that the company had keno equipment in the state of Washington. He asked if they were licensed to have those in Washington. **Ms. Fischer** said that a tribal operation had purchased the system. As soon as they realized that it was out of compliance with the compact. The staff contacted the Tribe and they in turn contacted the Automated Resources Group, which immediately submitted an application. The staff feels that they rectified the problem. There was obviously a misunderstanding as to whether this company had to be licensed or not.

Chairman Ludwig asked if that tribe was the Colville Tribe. **Ms. Fischer** said no, it was not the Colville Tribe. *Vote taken; motion carried with five aye votes.*

QUALIFICATION REVIEWS

BIG SISTERS OF KING COUNTY, Seattle

Ms. Fischer said this organization was formed in 1973 to encourage girls in the community to grow into healthy, self confident and responsible women by supporting one-to-one relationships between girls and women volunteers. They have been licensed since 1978 and have 23 active members who also serve as their board members. During their last fiscal year, the organization served 400 girls ages six to eighteen through their match program. They also developed two new programs – Life Choices and Big Sister Buddies. These programs provided mentoring to girls during the school day at two Seattle public schools that had a high population of homeless, immigrant, and non-English speaking children. By creating these two programs, the organization was able to offer volunteer opportunities for women who could not meet the time commitment necessary for participation in their matching program.

The organization did not meet its required net return percentage of 12 percent for its license class. However, for their fiscal year to date, the organization's net return percentage is 14.6 percent, well in excess of the 12 percent required. The staff recommends that this organization be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

Commissioner Forrest suggested that when the staff are making a compliance analysis report they mention the fiscal year ending so-and-so, so as time goes on their progress can be compared to what the next month's is. Sometimes the staff is talking about three months they've improved, or six months. If the fiscal year were mentioned it would be helpful to him.

Commissioner Herbold moved that Big Sisters of King County be approved as a charitable organization and authorized to conduct gambling in the state of Washington; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with five aye votes.*

Chairman Ludwig observed that in Spokane, Tacoma, and elsewhere the Big Brothers and Big Sisters were together as one organization and pointed out that in King County they were separate. He wondered if this were because the organization was so large in King County and that they need two instead of one. **Director Bishop** said he had been informed that it is a choice that each area has.

Steve Fenn, Big Brothers of King County, said his organization was chartered in 1957 long before the trend was to do both. In many parts of the country, the separate corporations have now combined and that just has not happened in King County. **Director Bishop** said he did notice that recently the two groups sometimes entered into joint operating agreements to split some of their expenses for fundraising, so there is some cooperation between the two groups.

SEATTLE CASCADES BOOSTER CLUB, Seattle

Ms. Fischer said this organization was formed in 1974 to provide financial and volunteer support for the Seattle Cascades Drum and Bugle Corps and their Auxiliary program. Their specific programs include A Corps, B Corps and Winter Color Guard. The A Corps constitutes the primary program and involves approximately 80 youth between the ages of 13 and 21. The B Corps is the local parade unit that involved 15 boys and girls. Forty children participated in the Winter Color Guard and the organization also sponsored and provided volunteer support for the Northwest Freedom Cup Drum and Bugle Corps show. Seattle Cascades Booster Club did not meet its required combined net return percentage of 12 percent for its Class "J" Bingo license for the last fiscal year. The organization's net return was 10.1 percent. The director granted a 1.9-percent variance for the fiscal year ended December 31, 1996; therefore, the organization's license class was not limited. Their year-to-date combined net return is 16.1 percent. The staff recommends that this organization be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

Chairman Ludwig asked what would have happened to this organization if they had not had a pretty good reserve. Their programs would have been in serious trouble financially this past year with a loss of \$180,000.

Ms. Fischer said they spent about \$126,000 of their cash reserves to provide program services. The organization has indicated that they are looking at some alternative fundraising methods. They have hired a development person to get some fundraisers going and look for corporate and individual contributions.

Chairman Ludwig asked how the staff determines whether an organization has excessive reserves. He pointed out that there had been quite a few cases where reserves had saved the neck of a program. He wondered if there was a formula they used. **Ms. Fischer** said that they look at the organization's cash, their liabilities and their operating expenses. As part of that formula, they analyze those things and if they have excessive reserves, they have the opportunity to write the director for an exemption because some organizations do have an exemption. Or they can work with them and suggest alternatives. Some organizations don't realize they need to spend more money, so staff educates them on that.

Commissioner Herbold referred to the compliance analysis and asked the staff to show her where they were in points of time. A variance of 1.9 percent was granted for the fiscal year ended December 31, 1996, but that number ties in with their deficient net return versus what it should have been. It is almost at the end of 1997, so she wondered if they were repeating the same thing that happened in 1996 for 1997 and asked why they were looking at what happened in 1996 when it is almost 1998. **Ms. Fischer** said that the organization's net return year-to-date was 16.1 percent. This shows that they had increased it dramatically. She said that, in showing those figures to the commissioners for the last fiscal year (because that's how the net return is measured -- on the fiscal year), the staff thought it might be informative to them. She said they tried to present what happened during the last fiscal year because that is the year that they are looking at here with the financial information, and then present what has happened from the last fiscal year to today.

Senator Prentice asked if the fiscal year number, which in this case is a calendar year number, is different from when they need to renew their license, so they are looking at the most recent fiscal year ended for an analysis.

Ms. Fischer said that was correct and that they were looking at the recent fiscal year to date, so they looked at the year ended December 31, 1996, which happened to be the organization's fiscal year. They also gave the information from January 1 through the most current information the staff has. **Senator Prentice** asked if this was a more recent problem or if this had been a pattern. It seemed to her that they were going to be seeing more

and more of these that are having difficulty staying in compliance. She said the reason she was picking up on this is that she remembered when this group was Seattle Cascades Cadets over 30 years ago when her son was a member of the Imperials. She remembered Gary Stubbs very well and he really held it together. She had seen how he worked with the kids, he cracks the whip and makes sure they know how to march. She said her concern was that because of other forces that were out there and they are struggling to make it, she wondered about suddenly saying, "Well, sorry you're not in existence anymore" and cutting out what she sees as a really good program. She said she did not have a solution at the moment as to how the Commission could help them succeed. She predicted that they would be seeing more and more of these that are just going to be hanging on.

Director Bishop said this will be an issue and it is what the task force studied last year. One thing to keep in mind is that the compliance for a license class is only a piece of information in this report and should be kept separate. This report is supposed to be their qualification as a charitable nonprofit organization and as long as they are doing programs, they will be a charitable nonprofit organization. Compliance with regard to license class has to do with how well they are performing in a saturated market. He said that, back in 1988 or 1989, the Commission made a decision as to whether to limit how big a bingo game could become. The economies of scale theory is that the larger a game gets, the more efficient it can get and, in theory, the more efficient it gets, the better the community as a whole will benefit because more of the dollars will stay with the community. The choice was that or deciding that a particular organization can only make a million dollars and then they would shut their doors. Once down that path, the whole issue became how to monitor or enforce this issue. If they are going to get bigger, they have to get better. That is what the compliance for license class is.

Director Bishop said that every organization goes down the path where they are having a bad time and it is hard to stay in compliance. Different competitive factors come into play. But if they are given time to turn a bingo game around – getting customers back, fine tuning the payout schedules, possibly talking to the landlord to get the lease reduced – those all take time. They decided to change it so that licensees have an opportunity to come back and say they have a plan and request to not be shut down, not have their license reduced, and not be penalized. He said the six-month lag between when they were in compliance this period or not in compliance was okay because it is an automatic process. If they could work themselves out of trouble, they would have no penalty. If not, then decisions have to be made whether to limit their income and allow some other organizations to grow that might be able to get better use out of the income.

Commissioner McLaughlin moved to approve Seattle Cascades Booster Club as an educational organization authorized to conduct gambling activities in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with five aye votes.*

DEFAULT ORDER

HUNG V. LE, Renton
Case No.

Chairman Ludwig said this was on last month's agenda and was postponed for action until this meeting.

Ms. Tellefson said this one was held over because the staff was not ready with the paper work. The director issued an order summarily suspending Mr. Le's card room employee's license for being involved in professional gambling through a bookmaking operation. Criminal charges are pending against Mr. Le. He failed to request a hearing and didn't respond to the Order of Summary Suspension. He was served personally and his attorney was present when he was served, so he did receive the charges and knows what is pending against him. Since he failed to request a hearing, staff recommends revocation of his license.

Chairman Ludwig asked if this is automatic or if there should be a vote. **Ms. Tellefson** said the Commission needs to take a vote on default under the Administrative Procedures Act when someone doesn't respond to the administrative charges within the time period, default order can be entered, but the Commission must act on it.

Chairman Ludwig asked if anyone present wished to speak. Hearing none, he called for a motion.

Commissioner Forrest moved to approve the findings, conclusions and order revoking Mr. Le's license. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with five aye votes.*

PETITION FOR REVIEW

DAVID L. FREY, Kirkland
Case Report 96-1355

Chairman Ludwig said this item was a petition for review of the denial of his application for a card room employee's license. He said Judge Forrest would preside over this because it was an appellate matter.

Commissioner Forrest asked if anyone was in the audience on behalf of Mr. Frey and the state. **Mr. Dennis Reynolds** said he was the attorney for the petitioner. **Kim O'Neal** said she would represent the state.

Commissioner Forrest said it was his understanding that past practice had been 10 minutes for each attorney. If for any reason that won't be adequate, it seemed to him that the briefs had very thoroughly covered the issues. However, he asked if anyone objected to that.

Mr. Reynolds said that if there was a theme in this case, it is what he thinks a member of the public should expect from a public agency when that agency is considering a license request. He said that through the years, his clients expected to be considered fairly in the sense of having an application considered on its merits -- not on some unpublished standard or policy. He said in this particular case, he believes the staff investigator and the staff decision was based upon an unpublished standard. That standard is that if an individual has been convicted of a gambling crime in the past, it is an automatic disqualification to obtain a gambling license. He said his comments show why that was the unpublished standard applied here and why that is the incorrect standard.

Mr. Reynolds said Mr. Frey would like to have a card room employee's license, but most of all he wants fair treatment and consideration of his individual circumstances. In terms of the unpublished standard, finding 1.12 in this proceeding states that the investigator involved, Elmer Holland, attempted to discuss individual circumstances with Mr. Frey, but was unable to do so. Mr. Reynolds pointed out that his client returned phone calls but the two never connected.

Commissioner Forrest asked if there was anything to prevent him from offering to the Administrative Law Judge anything that he would have offered in the initial stages of the administrative proceeding. **Mr. Reynolds** said their problem was when they went to the hearings examiner with the recommendation of denial, those presumptions were hard to overcome. His answer is nothing prevented them in the sense of the hearing examiner considering all the individual circumstances, and this Commission has those circumstances in the record, but they had to surmount an application denial and he submits that is a difficult thing to do. They are asking the Commission to step back, look at the individual circumstances, and makes its own decision without regard to the recommendations of staff or the hearings examiner. He thought it was without debate in this instance that Mr. Holland is very candid about the fact that he always recommends denial if he deals with an applicant that has a prior criminal conviction. They submit that that is not the law in the state of Washington, nor is it consistent with the rules and regulations of the Commission.

Mr. Reynolds said he wanted to clear up a couple of misperceptions, which he believed were unintentional on the part of the Assistant Attorney General. He said they were not stating that the Commission must disregard the 1985 conviction. The rules and regulations require that it be taken into consideration. Their point is that while it can be taken into consideration, a prior conviction does not automatically disqualify someone from applying for a license in the state of Washington. They point out the strong legislative policy that is very clear, that Chapter 9.96 RCW prohibits a public agency from using a prior criminal conviction to automatically disqualify an applicant for license.

Commissioner Forrest asked if in the facts of the case he is saying that the length of time that has passed since the original conviction and lack of any other criminal record or inappropriate conduct should outweigh the fact of the conviction. **Mr. Reynolds** said they were saying that, but they were also saying two other things. First of all,

they were saying that individual balancing has not occurred, at least at the staff level and they are asking that it occur at the Commission level. Second, it is more than passage of time. His client during that time has stayed violation-free. Also, one of the individual circumstances was that, although he was convicted for illegal gambling, the evidence was that he had no contact with organized crime. Though he made a mistake, it was not a mistake in a situation with organized crime, which is a concern to the Commission. Additionally, the individual circumstances show his client has obtained other licenses from the state of Washington, including a bartender's license from the Liquor Control Board, which is a highly regulated industry, as is gambling.

Commissioner Heavey referred to page ten of the findings where it says, "the Commission was only following the above-identified legislative mandate by carefully scrutinizing the conduct of convicted professional gamblers." He asked what evidence was presented by the Commission at the hearing that indicated that they had carefully scrutinized the conduct of Mr. Frey. **Mr. Reynolds** said one piece of evidence was that Mr. Holland testified that his superiors reviewed his decision. **Commissioner Heavey** said that was not the question he asked. **Mr. Reynolds** said he understood that but he was telling the commissioner what the evidence was. The only evidence they had that individual circumstances or some consideration was given is that supervisors reviewed Mr. Holland's recommendation. None of those supervisors testified, and his client, not being in contact with Mr. Holland, was never able to give his individual circumstances to anyone until the hearings examiner's contested case hearing. **Commissioner Heavey** asked what Mr. Holland's testimony was. **Mr. Reynolds** said Mr. Holland's testimony was that he did attempt to return Mr. Frey's calls, but they never connected. So his testimony was that Mr. Frey disclosed a criminal conviction, it was a conviction for professional gambling, and his policy is to deny each and every one of those applications; it's an automatic disqualification. But in fairness to all, he said he would have liked to have considered the circumstances and he did try to reach Mr. Frey, but was unable to do so. Mr. Reynolds is not saying that Mr. Holland is an individual that was entirely unwilling or unreasonable, it was just that they did not connect. Mr. Reynolds said the other testimony is that Amy Patjens testified that often professional gambling occurs within licensed card rooms and that's the concern of the agency. They had no reason to disbelieve that, it is just that he relies on Mr. Frey's testimony that his conviction was 12 years ago and it didn't come in the context of any dealings with organized crime.

Mr. Reynolds said he thought that the unique fact was that there was an automatic disqualification and he believes that is prohibited under the law. He agrees the conviction must be taken into consideration along with Mr. Frey's individual circumstances. He saw in the Assistant Attorney General's response an allusion that the licensed premises in question had been the subject of organized crime activities, but there is nothing in the record to support that. There is no testimony, no violation reports, no license history presented that this has been a problem with the licensed premises in question. There was testimony that it is a concern, and they acknowledge that concern. They do and still ask for a license with conditions and that would be acceptable to Mr. Frey, but they ask that the decision of the hearings examiner be reversed upon consideration of individual circumstances.

Ms. O'Neal, Assistant Attorney General, said she was assigned to represent the Gambling Commission staff in this matter and was the staff attorney at the hearing involving Mr. Frey's application. She said that Commissioner Heavey's question, she would note that in the record, exhibit no. 8, the very last exhibit in the packet, is the letter that Mr. Frey sent to Elmer Holland that was introduced at the hearing. It contains all of the information that the Commission is being asked to consider today in way of individual circumstances. In the transcript, Ms. O'Neal asked Mr. Frey as part of his cross examination whether there were other matters that he wished to have considered that were not contained in that letter. She said his answer was that the letter did contain the kind of information he wanted considered. She said she believes the record shows that there was consideration given to Mr. Frey's arguments that a long period of time had gone by and that he believed that he should not be held any longer responsible for that earlier criminal activity. That was considered, but Agent Holland did indicate that it was his evaluation that the statute, which is RCW 9.46.075(4), in his mind outweighed those individual circumstances and indicated that his recommendation would be that the license not be granted based on this earlier felony level conviction for professional gambling, specifically bookmaking activity. She also pointed out that Agent Holland obtained the records of that criminal conviction and reviewed those records to determine the kind of conduct that was involved. He did not simply look at the title of the crime and conclude that that was sufficient. He did look at the records that explained what conduct was involved and Mr. Frey did accept professional sporting bets of an illegal nature.

Chairman Ludwig said that, based on her statement that Mr. Holland looked into the conduct, but the

Commission does not have the benefit of what that conduct was, other than it resulted in a conviction. He asked if it would have been helpful if Mr. Holland would have described the course of conduct. **Ms. O'Neal** said she thought he did not go into detail, but at least the records that he obtained that gave the available record information about that conviction are attached as exhibits. She said in the future she would make sure that whatever details of the conviction they have are included in the record but she said she believed that, based on exhibits and the testimony, the record contained the facts that Mr. Frey did accept illegal sports bets over a several-month period.

Chairman Ludwig said he can determine from the record that Mr. Frey was involved in other bookmaking, but he would not know how extensive it was. **Ms. O'Neal** said she could not add much more than it was over a several-month period and he was himself accepting those bets; sometimes people are convicted for having engaged as a player. He was the actual bookmaker himself. He was accepting those bets and profiting from people paying him for the privilege of making those bets with him.

Commissioner Forrest asked if he is to assume that there was no pre-sentence from the state. He noticed it was not included in the record. **Ms. O'Neal** said she did not know. She said she believed they obtained all of the records that were available, but she could not be sure without checking it out. **Commissioner Forrest** said that having that would be helpful. The question he had was if he understood the judgment and sentence correctly, this was a jury trial, but the record doesn't show whether the defendant testified or not. **Ms. O'Neal** said she did not know. **Commissioner Forrest** said that information would also be helpful for an administrative law judge and in turn for the Commission. **Ms. O'Neal** said there was essentially no dispute about the conviction. Mr. Frey made no attempt to disguise that he had been convicted or that it involved bookmaking. **Commissioner Forrest** said, for example, a person can be convicted of second degree burglary for something relatively minor. **Ms. O'Neal** said professional gambling activity normally requires an undercover investigation. So often, even with someone who has been caught and arrested and prosecuted, the total amount of the activity or the character of the activity is often difficult to determine because they can only prosecute for what they actually see them doing. And they typically don't see it unless they have undercover agents at the premises watching it happen.

Commissioner Heavey said there is an affirmative responsibility on the part of an applicant to establish by clear and convincing evidence his or her qualifications for licensure. An individual testifies that they have been convicted of a felony 12 years ago, they have other professional licenses that have been issued since then, they have not had any administrative hearings or any other complaint with regard to those professional licenses, they have not been charged with or violated any laws except they were charged with a violation of one law, which was subsequently dismissed because it was a false charge. What other evidence can they establish that would establish by clear and convincing evidence his qualifications for licensure? What else do they have to prove? **Ms. O'Neal** said it was not dismissed because it was a false charge. It was dismissed under the statute, which allows a defendant, after the passage of a certain period of time, to have a conviction discharged. The same statute that allows the Commission to consider a conviction in the first place. **Commissioner Heavey** said he was not talking about the gambling charge. He was talking about the domestic violence charge that was dismissed because it was a false charge. **Ms. O'Neal** said that was not the basis of the action here. She said she thought it was fair to say that there is nothing that Mr. Frey could have done that would have changed the staff's reaction to this particular conviction because it is professional gambling -- bookmaking activity -- and because he wants to be licensed by the Gambling Commission even though he has demonstrated that he will not himself follow the gambling statutes and regulations. The staff does not feel that he can be trusted to ensure that others will comply. It is one of the duties of a card room employee, not only to abide by the statutes and regulations himself, but to ensure that the others who patronize that establishment will also follow those rules and regulations.

Commissioner Heavey asked what evidence was presented to support that presumption. **Ms. O'Neal** said it was based on the fact that he himself has in the past failed to follow those statutes and regulations. **Commissioner Heavey** said that was 10 or 12 years ago. **Ms. O'Neal** said she would also point out that both the Liquor Board and other kinds of licensing boards would themselves take a look, very seriously, at evidence that he had violated their statutes or regulations. The Liquor Board would look very seriously at prior violations of the liquor laws in the same way that the staff and the Commission looks very seriously at prior violations of the gambling laws and regulations. **Commissioner Heavey** said he commended the Liquor Board but he was not on the Liquor Board. He is on the Gambling Commission.

Ms. O'Neal said she would simply point out that there are different criteria that the Gambling Commission might want to consider. She said the Commission could consider this conviction to be of much more weight than a different regulatory body enforcing a different set of laws and regulations. She said she wanted to be clear that by statute, the Commission is empowered to deny this application. The staff and the director and the Administrative Law Judge had all considered the information they had before them and concluded that the application should be denied. She said she would point out that there is in the record an indication that bookmaking has occurred on the premises where Mr. Frey wishes to be employed and that conditions that he offers would in no way ensure that he would comply. He is essentially offering to provide a voluntary report, but if the staff could depend on his voluntarily disclosing his activities then they would not have recommended that his application be denied. That would provide no additional support other than what has already been required of the licensee to provide. She said she asked Mr. Couley, who owns the establishment, where Mr. Frey would be working. He appeared at the hearing and she asked him whether he would be supervising Mr. Frey at all times or whether there would be times Mr. Frey would be in the card room all by himself. He indicated that there certainly would be times when Mr. Frey would be in the card room by himself and, quoting from the material in the transcript she read, "if I have to baby sit him all the time, I don't want him." She said that summarizes the concerns of the Commission staff. They do not have sufficient agents to have agents in all of the card rooms across the state and even if they did, catching someone who is taking illegal sports bets requires more than simply observing what's going on in the card room. It usually requires an undercover agent and a number of months of activity to become acquainted with all those who are engaging in this activity. They have to get their trust in order for them to engage in what they know is illegal activity in the agents' presence, so it would be very difficult to catch someone who is engaging in this sort of conduct. That is the reason why the staff regards these matters with so much concern, why they urge the Commission to consider the entire record, and to confirm the initial order of the Administrative Law Judge and deny the application for a card room license.

Commissioner McLaughlin said she read in the record referrals to the card room having had some illegal professional gambling going on and wondered what happened to the card room for this activity because it was mentioned twice.

Ms. O'Neal said there is no history of violations at this card room. There is no case where the Gambling Commission staff has caught illegal bookmaking happening on the premises where Mr. Frey is, but in the testimony that was given, both Mr. Couley and Mr. Frey indicated that they had seen people that they knew were involved in bookmaking activities frequenting the card room and Mr. Frey indicated that he had observed from time to time people who engaged in that activity in card rooms. He indicated that he habituated card rooms himself, and he knew that it was a problem for illegal bookmaking activity to go on in card rooms. But there is no violation history at the place and that is clear from the record.

Commissioner McLaughlin asked, if the Commission denied the license, would there be a time when a person lives down a prior conviction and a possibility that they could come back in a certain amount of time and apply again and it will be looked at? **Ms. O'Neal** said their denial would not preclude him from re-applying. **Commissioner McLaughlin** wondered why they would re-apply if they were never going to be approved again. **Ms. O'Neal** said she was sure there was some point in time that they could live down a prior conviction, but she was not the person who could answer the question. She said the staff and the director did not believe sufficient time had gone by. They did explore the idea of supervision, which she had discussed previously. **Commissioner McLaughlin** asked who could answer this question for her. **Ms. O'Neal** said that in this case and at this point the decision was essentially at the Commission's discretion. **Commissioner McLaughlin** said she was not ready to make a decision before someone answered this question for her.

Commissioner Forrest was concerned that the case may come back before the Commission again. If he reapplies in another five years and the staff and another administrative law judge does the same thing, then it would be right back before the Commission.

Chairman Ludwig asked if it is her position that, if this was any other Class B or Class C felony, the result might have been different, but because it was professional gambling and the application is for a gambling license. **Ms. O'Neal** said she doesn't remember if that specific question was asked, but yes, that does make a difference. She said that staff take a professional gambling, a violation of gambling laws, more seriously than they would a

conviction for domestic violence or marijuana possession or some other kind of criminal conduct.

Commissioner Heavey said he has a problem with a response like that because it is new evidence. **Ms. O'Neal** said she simply doesn't know if without checking the record if Elmer Holland was asked that specific question. She said she could look in the transcript but it would take a couple of minutes. **Mr. McCoy** pointed it out on page 11 of the record. **Commissioner Heavey** asked if there is anything in the record that would indicate that Mr. Holland, in his past experiences, had ever considered the passage of time when he has looked an individual convicted of felony professional gambling or that he would recommend denial. **Ms. O'Neal** said that is something that was asked and answered and that the passage of time is something he does consider. **Commissioner Heavey** asked if he was asked how many applications he had offered with a recommendation for approval when there has been a previous conviction for gambling. **Ms. O'Neal** said she believes he indicated that his recommendations have on a number of occasions been changed as they go up the chain of review. He is not the final word and he indicated that his supervisors have, on numerous occasions, changed his recommendations.

Commissioner Heavey asked if Mr. Holland said he ever recommended approval for any license applicant in which there was a previous conviction for professional gambling. **Ms. O'Neal** said he indicated that a prior felony conviction for a violation of the gambling laws would always result in his recommending denial, but that it wouldn't always result in denial. **Commissioner Heavey** asked if Mr. Holland was asked if there was any instance where there was a gambling license approval for a person convicted of professional gambling. **Ms. O'Neal** said yes, he was asked whether his recommendation had been overruled when there had been a past conviction and she believes he indicated that that recommendation had been changed by his supervisors in the past in that kind of a case.

Commissioner McLaughlin asked if she could get an answer to her question about the passage of time for a conviction like this. **Commissioner Forrest** said he doesn't know if anyone can answer that. **Chairman Ludwig** suggested that Mr. Reynolds answer. **Mr. Reynolds** said he has looked at the Orders of the Commission and found where licenses were granted when there was a professional gambling conviction, often with conditions. For some reason, sometimes applicants don't even disclose the conviction in their history, and then they are automatically denied when it comes out. He doesn't know what the passage of time factor should be, and individual circumstances do have to be looked at. When a client testifies to the owner that they have seen people engaging in bookmaking in the facility and acknowledge that to the WSGC staff and also testify that those people are not welcome, that should be the kind of licensee the Commission wants. His client and the owner won't lie, because they could have said they had never seen those people around and that they are violation-free, which they are. But they have seen those people and they're not welcome. He said the record is clear. He added that the individual circumstances show Mr. Holland always recommends denial, and they think that is wrong.

Chairman Ludwig said he realizes that someone can be convicted of any particular crime based on minimal criminal conduct as opposed to extensive criminal conduct. He doesn't know what kind of a bookmaker Mr. Frey was, or whether he was the sole bookmaker. He said that would make a difference to him. **Commissioner Heavey** said that is new evidence. **Mr. Reynolds** said his client did take bets; approximately \$2,000 worth over a two-month period. He did testify before the jury and was convicted. He was discharged from his conviction within the statutory time period with no problem and it has been 11 or 12 years since then. It was the biggest mistake of his life, and he testified that it did not involve any contacts with organized crime. It grew from a hobby to something that was over the line. It is something that is mostly in the record and what isn't in the record he will concede to. It was a mistake.

Chairman Ludwig said he thought this should be discussed in executive session. **Mr. McCoy** said yes, the discussions are generally done during executive session. **Commissioner Forrest** said he'd like to discuss this item in executive session later today and announce a decision after the executive session. He said they would get a faster answer than they would from the Court of Appeals.

CARD ROOM CONTRACT/HOUSE BANK PILOT TEST

SILVER LANES, Spokane

Sherri Winslow, Division Director, Field Operations, said there is a list of 65 applicants for this card room pilot test. She said packets are being handed out that contain what was mailed out to each card room test participant. The package includes a brief overview of the test program as it relates to house banking, and some of the procedures the staff will be looking at in the house banking portion of the test. It also includes all of the revised documents that the staff is working with. Hopefully, this will be the final version of the documents. It includes an operational agreement, Appendix A, appendices B and C, an internal controls outline, and a record keeping format. She will have a presentation, if they are interested, at the January meeting about the differences in the varying levels, because Commissioner Forrest had requested an overview on that at a prior Commission meeting. They have not had an opportunity to work with the minimum standards yet because most of the organizations that have come forward up until now have been at the higher level of operation. The staff just recently came forward with the minimum standards.

Chairman Ludwig noted that on the agenda it says, "Card Room Contract Under House Banked Pilot Test." But under tab #3, there is a contract for the "Card Room Enhancement Program Operation Agreement." He asked about the difference between the two programs. **Ms. Winslow** said there are actually three card room operations before the Commission today. She said she'd like to report on each of them separately. The first one is Silver Lanes, which is under the house banking scenario. **Chairman Ludwig** asked if the heading was correct. **Ms. Winslow** explained that all of the information that is included under the house banked program is under the purview of the card room enhancement program, so house banking is just a scenario within the entire card room enhancement program.

Commissioner McLaughlin asked if Silver Lanes is just being added to the pilot program. **Ms. Winslow** answered that they are adding the house banking provision. They are already in the pilot program.

Ms. Winslow said the first two card room contracts require action; the last one is just a brief summary of what is going on with Freddie's Club. The first one is the Silver Lanes contract for house banking. The corporation's name is Datamak and they purchased Silver Lanes in July 1993. They submitted a request to participate in the house banking test as a level two, phase one, participant in September 1997. They are requesting approval to operate a total of ten tables, six of which will be operated as house banked black jack and then poker would be played at the remaining tables. The staff reviewed their internal controls, which consist of administrative, operational and accounting controls. Controls in these areas were compared to Appendices B and C and it was determined the controls were adequate and in compliance. On October 23, the staff conducted a pre-operation inspection in which the nature, size, and scope of the gaming operation and the controls were compared to the information submitted. Based on the review, it was determined that the licensee's operations are in compliance with all the requirements of appendices B and C and the internal controls are functional as stated in their submission. Approval to participate in the Commission's house banking card room test as a level two, phase one, operation is recommended.

Chairman Ludwig asked if there was anyone present from Datamak or Silver Lanes (a man in the audience stood up). **Ms. Winslow** said yes, there is. **Chairman Ludwig** asked about Appendix A, where it says they propose seven tables. **Ms. Winslow** said they are planning to have a rake at six tables and higher limits at one. **Chairman Ludwig** asked if it means they want to let the player play against the house and also charge the player to do that. **Ms. Winslow** said the six tables will have house banking and that there may be a typo. She said the representative from Silver Lanes would like to speak.

David Montecucco, President of Datamak, Inc., d/b/a Silver Lanes Casino and Scrapbook Restaurant, said they are currently charging for time on six tables. If they get approved for the test, then the players will play against the house and they won't be charging time any longer. **Chairman Ludwig** said he must have misread this completely because the appendix says there is a rake at six tables, but they are also house banked tables. **Ms. Winslow** apologized and said that is a typo. **Director Bishop** asked if that should be four tables. **Mr. Montecucco** said the poker is at four tables where they will still charge for time; one has a higher limit. There are six tables of blackjack.

Commissioner McLaughlin asked what it should say. **Ms. Winslow** said there shouldn't be anything listed in that section other than higher betting limits on one table. **Director Bishop** clarified that under "A," there shouldn't

be anything. **Ms. Winslow** said the version that will be signed is already corrected.

Chairman Ludwig said he didn't know if public comment was appropriate on these individual contracts, but he knows this is an issue of interest. He asked if there were any comments or questions. This is only the second one and the last one was somewhat unique anyway.

Rick Jones, controller with Datamak, Inc., said one of his teammates, Dan Green, put the internal controls together. He thanked him and also the WSGC special agents who worked with them, including Dan Belles, Patricia O'Brien, Jonelle Battaglia, and Mark Harris. He said they did a great job guiding them through this process. It was a long project and they deserve recognition.

Chairman Ludwig asked why a Bellingham agent went to Spokane to work on this. **Ms. Winslow** said this was one of the first organizations to go through the process and by pooling a team of agents from different geographic areas, consistency will be developed statewide, which will help alleviate some of the growing pains. **Chairman Ludwig** said that sounds like a good idea. He thanked her for the explanation.

Commissioner Heavey moved to approve the contract; **Commissioner Herbold** seconded the motion. **Chairman Ludwig** restated the motion as being to approve the contract between the Gambling Commission and Silver Lanes Casino to operate house banking as proposed by Appendix A under the card room enhancement program. **Commissioner Heavey** said that Ms. Winslow is getting really good on her feet. *Vote taken; motion carried with five aye votes.*

CARD ROOM CONTRACT/1996 CARD ROOM ENHANCEMENT PROGRAM

Cactus Jack's, La Center

Ms. Winslow said the contract for Cactus Jack's of La Center, Washington, is under tab #4. She said this has nothing to do with the house bank provision, although they may be coming forward later with that request. This is for the general enhancement program. This establishment has received a waiver in order to participate because they have not been in operation for the full period of six months. The staff has reviewed the organization's structure and have approved that waiver. They are looking at having an alternative collection of fees on five tables, which would be the rake. The staff is recommending approval. **Chairman Ludwig** asked if they were conducting traditional Washington Blackjack; **Ms. Winslow** said yes, and she believes they also played poker at that establishment.

Chairman Ludwig asked if anyone is present from Cactus Jack's; no one came forward. He asked how many card rooms are located in La Center. **Ms. Winslow** said there are four separate operations and of those four, two are combined – two large operations are owned by one individual, and two are owned by this individual. **Chairman Ludwig** asked how long the operator of Cactus Jack's has been a licensee. **Ms. Winslow** said the owner has only been a licensee in operation for a few months; however, he had exposure to training on Washington rules and he has hired individuals who have worked in Washington's card room system for quite some time. For these reasons, the staff felt comfortable in approving a waiver. **Chairman Ludwig** asked if they are on the list for house banking. **Ms. Winslow** said yes.

Commissioner Heavey asked what the general criteria is for granting a waiver on the amount of time a licensee must be licensed before entering into the pilot program. **Ms. Winslow** said one is training, which is the WSGC's mandatory training program, and knowledge and experience in Washington gaming. The other big important item is the employees and their understanding of Washington rules. This establishment has hired people who are currently working in the Washington program, whether it be in the tribal arena or in the card room arena. **Commissioner Heavey** asked why there is a condition that is uniformly waived. Why doesn't the rule just state that they can do this if they meet certain requirements. **Ms. Winslow** said it was established in the rule that way. **Director Bishop** said that is a very good point and it is in the pilot program rule but should be looked at before permanent rulemaking takes place. Everyone who buys a card room will apply for a waiver and, so far, two have been granted. **Commissioner Heavey** said this is just one of those things picked up for the pilot program. **Director Bishop** said yes, it was a condition going in because a new game was being played and tested.

Commissioner Heavey moved to approve the contract; **Commissioner McLaughlin** seconded the motion. **Chairman Ludwig** asked if there were any comments or questions from the public, since this is a new program. No one came forward.

Vote taken; motion carried with five aye votes.

Chairman Ludwig called for a recess at 2:55 p.m.

Meeting resumed at 3:12 p.m.

Chairman Ludwig announced that Senator Ray Schow arrived at the meeting shortly after it began and wanted that on the record.

FREDDIE'S CLUB, Renton

Review of Pre-Operational Inspection for House Bank Test Program

Chairman Ludwig said this item is a review of their pre-operation inspection, which was completed after their proposed contract was approved at the last Commission meeting. **Ms. Winslow** said Freddie's received approval at the October meeting pending review of the internal controls and pre-operation inspection with final approval being given by the Director. GSG is the corporation that currently owns Diamond Lil's card room and Freddie's Club, both of which are located in Renton. On August 18, the corporation requested approval to bring Freddie's Club into the house banked pilot study as a level two, phase one, participant. Of the 15 tables, 11 will offer house banked games and the other 4 will be poker utilizing a rake and offering a Player Supported Jackpot. The internal controls, consisting of administrative, operational, and accounting controls, were reviewed by the WSGC staff and those were compared to appendices B and C and it was determined that the controls were adequate and in compliance with the appendices. On October 31, Special Agent Wittmers conducted a pre-operation inspection and during the inspection, the nature, size, and scope of gaming operations and controls were reviewed and agreed to the requirements of Appendix C. The surveillance system was reviewed for adequate coverage of the gaming stations, the gaming floor, the cage, and the soft count room. Based on this review, it was determined that the licensee's operations are in compliance with the requirements of appendices B and C, and their internal controls are functional as stated in their submission. They received approval to participate in the house banked pilot study as a level two, phase one, operation.

Chairman Ludwig asked when the Director signed the contract. **Ms. Winslow** said Director Bishop signed it after the pre-operation inspection. The recommendation was made around November 7, but they did not begin operations until November 10 after a few minor things were worked out. **Chairman Ludwig** asked what the effective date of the rule was. **Director Bishop** said November 10 was the effective date.

Senator Schow said that, under the hours of operation, it says 2 p.m. to 10 a.m. daily. He asked if those are the hours of operation. **Ms. Winslow** said yes, those are their hours. **Director Bishop** said yes, that was confirmed yesterday with Mr. Steiner when he gave a tour and said they do operate from 2 p.m. until 10 a.m. There must be a four-hour closure before re-opening.

Chairman Ludwig asked if there is an estimated number of card room contracts that might be up for approval in January. **Ms. Winslow** said there will probably be between four and five organizations coming before the Commission in January, if everything works out. **Chairman Ludwig** said it sounds like the staff is moving as fast as can be expected. **Ms. Winslow** said yes, the staff is moving as rapidly as they possibly can. **Director Bishop** reminded him that there is a little more time between meetings this time.

Commissioner Heavey asked if there is any other gaming activity that takes place after 2 a.m. **Ms. Tellefson** said yes, tribal casino operations may operate past 2 a.m. if they get approval from local law enforcement and as long as there's no objection. There is a four-hour closure period that doesn't have to be at any particular time. **Commissioner Heavey** asked if some of the tribal operations run in the early morning hours. **Ms. Tellefson** said

yes, some of them do. Card rooms can also request alternative closing times and operate past 2 a.m. as long as they are closed for the mandatory four hours.

Senator Schow asked if liquor sales stop at 2 a.m. when they operate past that time. **Ms. Winslow** said yes, it does stop at 2 a.m. She's not sure what the start up time is in the morning for serving alcohol. **Chairman Ludwig** said in that area there are a lot of shift workers at Boeing and elsewhere and maybe those are the ones playing during the night. **Ms. Winslow** said that would make sense.

Senator Prentice said yes, that is true, and Freddie's is just a couple of miles from her house. Her understanding is some of the variation in hours that people are keeping is market driven anyway. She believes what they have done is take a look at that. There are going to be more shift workers than there have been. The latest Chinese order for planes are going to be 737s built right there in Renton and there is quite a bit of activity. She said Fred Steiner had analyzed that market exhaustively before he decided he was going to go into business. But she thought that if it presented a problem, they would be hearing about it at least from here.

Director Bishop said the chief of police and/or local law enforcement, as well as the Liquor Board, sign off before any one gets approval for hours outside of the normal ten to two a.m. So both the local jurisdiction and the Liquor Board approve.

Someone from the audience stated that liquor sales can begin legally as early as 6 a.m. and until 2 a.m. The Liquor Board does give them permission to run pull tabs 24 hours, while their card room runs until 8 a.m.

No action was taken on the item because it was just informational.

PUYALLUP TRIBE PHASE II RECONSIDERATION

Mike Tindall, WSGC program manager for the Tribal Gaming Unit, said he is charged with the responsibility of updating the commissioners on the Emerald Queen Casino's operations and their Phase II status. He introduced Mr. Sterud, Puyallup Tribal Chairman.

Chairman Sterud introduced fellow tribal member, Henry John, and Carlos de los Santos, tribal attorney. He asked those present to notice how far they had come in the last year compared to five years ago, compared to two years ago even. The spirit of cooperation that exists between the Tribe and the Tribal Gaming Commission and the Washington State Gambling Commission and staff has got to be appreciated by all the parties involved. He said he looks forward to that same spirit of cooperation in the years to come. He said the Puyallup Tribal Council is especially proud of the hard work that their Puyallup Tribal Gaming Commission has done. They accepted the challenge of creating a commission that regulated, to the best of their ability, the Tribe's gaming activities on the reservation. They have made incredible strides and should be applauded. Mr. Sterud referred to the friendly lawsuit, Washington State versus Chehalis, of which the Puyallup Tribe is a party. He said it behooves the process to continue in this spirit of good faith and cooperation in their future negotiations. He then introduced Butch Dillon, chairman of the Puyallup Tribal Gaming Commission.

Butch Dillon, introduced his fellow commissioners and Assistant Executive Director, Commissioner Lena Landry, Commissioner Toni Mansanares, Assistant Director Steve Koransky, and Executive Director James Miles. He thanked the Commission for reconsidering their Phase II review and they would be happy to answer any questions they might have.

Mr. Tindall said the Compact between the Puyallup Tribe of Indians and the state of Washington was signed on May 28, 1996. They opened their Class III facility on December 27, 1996, at the current location where the Emerald Queen now is located. The Phase II review was initiated by their agency on April 10, 1997, and they reported on the outcome of that review at the Commission meeting in May of 1997. At the meeting, the Commission issued an order allowing conditional Phase II status to commence at the Emerald Queen Casino. That order was issued on May 9, 1997, and required a six-month period for the conditions to be cleared or corrected. He said he had not planned on going over the conditions individually, just to report on the general overview. If anyone had questions, he would be glad to answer them.

Mr. Tindall said the Tribal Gaming Unit had been assisting the Tribe and they have been doing a terrific job of stepping up to the responsibility of regulating their facility. Their operation has been well run based on experience. The monitoring of their progress toward meeting the conditions started immediately after the order was issued. The final report on the status of those conditions is contained in the commissioner's handout packet and covers all of the issues addressed in the conditional order. He said that while there may be some compliance issues that need further attention, the staff recommends approval for unconditional Phase II operations at the Emerald Queen Casino. They make this recommendation because it is clear that a great deal of progress has been made, particularly in the last few weeks and that that progress can be directly attributed to the leadership provided by both their Executive Director, James Miles, and Assistant Director Steve Koransky. The WSGC TGU staff will continue to work with the Tribe, and the gaming agency particularly, along with the operators of the facility and their continuing relationship under the Compact.

Chairman Ludwig said the staff recommendation is for final approval of Phase II operation. He asked if there is any area that has been more problematic than any other areas. **Mr. Tindall** said there have not been any real problems. The most difficult may have been in making adjustments for the regulatory staff. If one issue stood out, that would be it. However, he said they have made great strides in that area and staff feel fairly comfortable that they are going to move forward and further develop their capabilities.

Chairman Ludwig said he remembered that after the Silverdale meeting last spring, some of them stopped to view the Emerald Queen at that time and he asked if people from the Commission were there yesterday on their way to this meeting. He said that as he recalled it was a nice looking facility. He asked if they were financially successful. **Mr. Tindall** said they are financially successful. He said they don't get involved in how the Tribe services their debt and how they actually utilize the funds, because it is a federal concern, but they are comfortable with saying they are financially successful.

Chairman Ludwig asked Chairman Sterud about the Puyallup Tribe indicating that if they received the conditional approval in May, there would be more tables, more income and the information relayed was that the Puyallup Tribe, because of that increased income was going to make a contribution. This wasn't a requirement of the Commission, but there was that indication or commitment that they were going to make a contribution to another tribe or two that because of their poor location compared to the Puyallup's great one to help them in meeting their obligations to the state and the local jurisdictions. He said he never heard anything more about it and wondered if anything of that nature had taken place.

Chairman Sterud said the Council had looked into that at the time and had made that commitment. They have not gone any farther with that commitment, but they are still working with Mr. Bishop and Ms. Tellefson to arrange something on it. He said the time has gone by so quickly because the Emerald Queen has been quite successful, but it has been a lot of hard work and a lot of people have put a lot of time into it and all of a sudden it is November.

Chairman Ludwig asked the name of the restaurant on the land based part of the casino. Someone from the audience said the name was Lafayette's.

Commissioner Herbold referred to the internal controls in the report and there are several references to dates. It says that the final revisions were to be submitted no later than November 5. She wondered if that had occurred and if the WSGC staff was satisfied with their internal controls. **Mr. Tindall** said those were received on November 5 and they are satisfied with them. They sent a letter of approval back to the Tribe on November 7.

Commissioner Forrest said he was reviewing the summary of compact violations and some of them seemed quite minor that one could expect to be worked out over a period of time. His question was, in retrospect, do they think that the basic rules to which they are required to comply are satisfactory and that it's just going to take some time to completely meet them, or do the initial rules leave something to be desired that they need some independent adjustment. He wondered what Mr. Tindall thought of this. **Mr. Tindall** said that in his and his staff's judgment, their basic operating rules are fully within the Compact and within the agreement. The experience they have had with every facility they have dealt with is that there is a learning period, a period of adjustment and in this particular case there is no exception. With regard to the regulatory programs as with almost every other

agency they have dealt with there is a growth period and within the first year things start to come together and they had done that in this case as well.

Commissioner McLaughlin said she thought she heard the Chairman say that when they received their conditional approval for Phase II that they were going to help the smaller tribes that are not on the I-5 corridor pay some of their bills. She said she thought she heard them say that, yes, they were. But she said she did not get an absolute answer and she said she would be much more comfortable voting yes to the permanent rules if she got that absolute answer. **Chairman Sterud** said he will have his people run some numbers and will get back to Director Bishop and Ms. Tellefson in two weeks.

Ms. Tellefson said she and Director Bishop met with the Chairman and his attorney a couple of weeks ago to talk about the issue and they made the commitment to them then.

Commissioner Heavey moved to approve Phase II gambling activities for the Puyallup Indian Nation.

Commissioner Herbold seconded the motion. **Commissioner Ludwig** said it had been moved and seconded that the Commission give final approval to the Phase II operation of the Puyallup Tribal Casino known as The Emerald Queen. He reminded the ex officio members they do have a vote on Compact issues. *Vote taken; motion carried with eight aye votes.*

OTHER BUSINESS/GENERAL DISCUSSION

Chairman Ludwig said he hadn't anticipated being done by 3:45 today so there is time to bring something up. He reminded everyone that there would be an executive session.

Commissioner Forrest said that the gambling industry is growing in Washington and he reasonably anticipates that some of the Gambling Commission employees are going to flow either to the tribal sector or the private sector or the charitable sector. He thought it would be helpful if the Commission would formulate some kind of rule as to when and what level of people should have any pause or what their duties should be, whether they can go work but can't lobby the Commission, or whatever it might be. He said he wasn't absolutely sure what, if any, restrictions might be appropriate or necessary, but he wanted to get the ball rolling and get the staff thinking about this issue. He said he thought there probably were other models with other regulatory agencies. He said he is not asking for any action at the moment but wanted to urge them to get on with it next year.

Chairman Ludwig said there is one statute that they are required to comply with. **Mr. McCoy** said the Executive Ethics Act does cover the executive level, but he understands the question as being a more general application for the agency itself.

Commissioner Forrest said he was just thinking whether there might be something specific to the Commission's situation that would call for a specific rule from the Gambling Commission with regard to its employees. He said he's thinking of people who come in and they ought to know if they are going to be confronted with such restrictions as part of their job. He said he would be unhappy if he came to work for an organization and no one told him until he had a good job offer that he would be required to refuse it because of the rule under the Gambling Commission. He wanted to clear the air.

Chairman Ludwig said that would have to be very carefully drafted, because he said he thought a person could not be prohibited from taking any job they want because they restrict their activities and contacts with the Commission if they left. He asked Mr. McCoy if that were correct. **Mr. McCoy** said he would have to look at that very carefully. **Chairman Ludwig** asked Mr. McCoy to look at that.

Commissioner McLaughlin asked if most government agencies and governments have rules and laws that cover that. **Mr. McCoy** said there are some statutes that cover some of those aspects and he said he thought it was appropriate to address that in some type of memo to the Commission regarding what rules are in place.

Commissioner Forrest said he would like a review of the statutory requirements that do control this area for possible comments on areas that they might want to add to. **Director Bishop** said that right now the staff is

updating the ethics policy to bring it more in line with the state law that changed last year or the year before last. He said they just received new WAC rules regarding ethics. He said that at the next meeting or in interim, the staff would send it out to the commissioners.

Chairman Ludwig asked Ms. Winslow about some new requirements that were mentioned at the last meeting for card rooms with five or fewer tables. **Ms. Winslow** said that, as she reported a little earlier, in January she would like to make a full report on the differences between the minimum standards and the regular standards for the card room enhancement test. She said they had not had anybody yet who requested to participate at the minimum standard level. They don't have a whole lot of exposure there. They have standards drafted. She would bring those forward at the next meeting and then cover the differences between the two and why they feel they can have lesser standards in those particular areas.

Chairman Ludwig called for an executive session to discuss the petition for review by Mr. Frey. He said the Commission would reconvene to announce the decision.

EXECUTIVE SESSION

Meeting resumed.

PETITION FOR REVIEW, cont.

DAVID L. FREY, Kirkland
Case Report 96-1355

Commissioner Forrest moved that the WSGC remand the case to the ALJ to take further testimony about the facts and circumstances of the original conviction and any further information he deems appropriate; **Commissioner McLaughlin** seconded the motion. **Chairman Ludwig** restated the motion that the matter of David Frey's license denial or denial of a card room employee's license be remanded to the Administrative Law Judge for further determination, circumstances of the original conviction, and any other matter that he deems appropriate, or, in other words, just as the maker of the motion said. *Vote taken; motion carried with five aye votes.*

Chairman Ludwig requested that a formal written order reciting those details be prepared and entered. Meeting adjourned.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, NOVEMBER 14, 1997

Chairman Ludwig called the meeting to order at 9:30 a.m. at the Shilo Inn, Ocean Shores, Washington. He introduced the WSGC staff and Commission members at the head table.

MEMBERS PRESENT: CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY; MARSHALL FORREST and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE, REPRESENTATIVE RUTH FISHER, and SENATOR RAY SCHOW

OTHERS PRESENT: BEN BISHOP, Executive Director; CARRIE TELLEFSON, Division Director, Policy, Planning and Support; SHERRI WINSLOW, Division Director, Field Operations; CALLY CASS-HEALY, Division Director, Licensing Operations; DERRY FRIES, Division Director, Special Operations; JONATHAN McCOY, Assistant Attorney General; and SUSAN GREEN, Executive Assistant

Chairman Ludwig introduced the head table.

APPROVAL OF THE MINUTES FROM THE OCTOBER 9-10, 1997, MEETING

Commissioner Herbold moved to approve the minutes from the October 9-10, 1997, meeting in Leavenworth, Washington. **Commissioner Heavey** seconded the motion. *Vote taken; motion carried with four aye votes (Commissioner McLaughlin abstained from voting because she did not attend the October meeting.).* **Chairman Ludwig** said the minutes are approved.

Chairman Ludwig announced that there were no staff reports.

RULES

GAMBLING SERVICES SUPPLIER RULES

New Section WAC 230-02-205 – Gambling services supplier defined

New Section WAC 230-02-206 – Gambling services supplier representative defined

New Section WAC 230-04-119 – Licensing of gambling services suppliers

Amendatory Section WAC 230-04-124 – Licensing of manufacturers, and distributors and gambling services supplier representatives

Amendatory Section WAC 230-04-125 – Distributor or gambling supplier representative license may be reissued when changing distributors or gambling services suppliers

Amendatory Section WAC 230-08-025 – Accounting records to be maintained by distributors, manufacturers and gambling services suppliers

New Section – WAC 230-12-223 – Prohibited practices—Lease and compensation

Amendatory Section WAC 230-12-225 – Repair or services not to be conditioned upon exclusive supply arrangement

Amendatory Section WAC 230-12-300 – Resident agent to be appointed by foreign manufacturers, distributors, gambling services suppliers, and commercial amusement game operators

Ms. Tellefson said there are ten rules up for final action today that have to do with creating a new license class for gambling services suppliers. Those businesses are individuals who provide services for gambling operators. Nine of the rules are new and amended and there is one repealer. Division Director Cass-Healy, at the request of Commissioner Herbold, provided a summary of this rule package that is located under tab #23 of the handout packet. She said that as gambling becomes more pervasive in Washington, there are people who are creative and decide that there might be different ways to get involved in the industry and there are people who provide various types of advice, record keeping services, storage and accounting services, etc. The agency is aware of about 19 businesses or individuals who fall into that category for being licensed. This is the fourth month that these rules have been on the agenda. In Item 3(c) there is a deletion. The prohibition on gambling services suppliers also being licensed as a manufacturer, distributor, or distributor representative has been deleted. The license fee has been changed to a flat fee of \$575 plus \$125 for each service contract. That gives staff the chance to review each contract and have reimbursement for that as well. The staff recommends final adoption.

Chairman Ludwig asked if these should be considered as a group or individually. **Ms. Tellefson** said they could be taken as a group unless there were questions or concerns regarding individual rules. She said in their packet it shows the changes from last month to this month. **Chairman Ludwig** asked if paragraph five was deleted from the last meeting. **Ms. Tellefson** said that was correct and then, in paragraph seven, it shows the change in the license fee structure.

Commissioner Herbold said she appreciated the new format and thanked the staff for making that change. She referred to paragraph five where the deletion occurred and noted a sentence that said “the gambling services supplier shall not purchase or deliver gambling equipment and/or paraphernalia for an operator.” She wondered what the reason for that was. She was contemplating someone who might be a management consultant who recommends that they get a particular pull tab series and says, “Hey, listen, I’m going to be right near the warehouse. Why don’t I just pick that up for you?” She said that would be prohibited and wondered why. **Ms. Tellefson** said the concept was that that would be getting into the area of distributor-type activity and they should probably be licensed as a distributor. There is not necessarily any relationship between a services supplier and a manufacturer or distributor where they could be accountable for picking up a product and delivering it.

Commissioner McLaughlin said if that person was not being compensated for picking up that product, if he was just doing a favor for who he was working with, she wondered what difference that would make. **Director Bishop** said he did not know if that was really necessary, because currently no one but an operator or distributor could purchase any gambling equipment or device. In other words, they must be a licensed operator or a distributor to actually purchase it, so a services supplier would not be able to purchase a product. He said he thought that was what they were more interested in than whether they physically pick it up and deliver it to them.

Ms. Winslow said the field operations staff would probably not have a problem with the picking up of equipment or supplies. It would simply be a matter of accountability and there still would be that with the invoicing. **Director Bishop** said if the services supplier went by a distributor’s warehouse and said that Joe’s Tavern called in an order and he was there to pick it up and then he just picked it up and took it to the tavern, that wouldn’t be a problem.

Commissioner Herbold asked if the sentence were necessary if that were the case. **Ms. Tellefson** suggested deleting the words “or deliver” and that would take care of the issue.

Chairman Ludwig said if he were a distributor and also had an operator’s license, he could then deliver product to his own business and not charge for it. **Ms. Tellefson** said that issue would be addressed later in the day. **Chairman Ludwig** said he assumed that that language was actually in there to keep the situation equal and fair between all operators. The one that had the dual license wouldn’t be taking an unfair advantage in some way over other licensees, other operators. **Ms. Tellefson** said she thought this had more to do with just the services suppliers and what they should or should not be doing under that particular license and the issue of whether they should be purchasing gambling equipment is fairly clear, but the delivering part is perhaps not as important and could be deleted.

Chairman Ludwig called for other questions.

Commissioner McLaughlin made a motion to delete the words, "or deliver" in paragraph five of WAC 230-04-119, the Licensing of Gambling Services; **Commissioner Herbold** seconded the motion. **Chairman Ludwig** said it had been moved and seconded that they delete the words in paragraph five, "or deliver" that immediately followed the word "purchase." He opened the discussion for public comment on the entire packet of 10 rules.

Jim Corazine, owner of Evergreen Games, which is a dead game service in Tacoma, said he appreciated the role of the Commission in licensing and monitoring their industry because it was the only way to get control and to have meaningful procedures. However, the \$575 license fee increase would force many who work in dead game services out of business because they are small operators who cannot afford to grow larger. Because of some dishonest people in the industry, the quality of the reports the Commission receives are less than adequate and the revenue they collect is not correct. He said guidelines were needed and questions should be asked like "Do they have the equipment to properly weigh these games? Are they using the proper sampling procedures to determine how many tabs there are in a game? Are they presenting the reports in a manner that are accurate?"

Mr. Corazine said that, because some of the people engaging in the pull tab operations were not inclined to good record keeping activities, it would be good to hire a game service for these activities. That would help everybody and would ensure that the proper revenues were being collected. He gave the Commission explicit details on how that might work and said it would enable the special agents to go down a list showing where the overages and shortages were. Then they could focus on the taverns or licensees that were having trouble. This would save time by not having to wait a few months for the paperwork to go through the system and by then the employees who were stealing and creating other problems were gone. The special agents would only have to monitor the game services and if they had guidelines on what they should do in the way of weighing games and auditing games, there would be state-monitored quality control, but with no cost to the state. He said the revenue stream would go up once the records were accurate. He offered his services to the Commission to help establish the guidelines for how the game services should conduct their business.

Chairman Ludwig said it is the Commission's understanding that license fees are established to cover the cost of regulation in the particular area, but that he seemed to be suggesting that it might actually be less expensive for the Commission. **Mr. Corazine** said that was exactly right. **Chairman Ludwig** asked the Director to respond.

Director Bishop said he appreciated Mr. Corazine's response and said that they had factored that into the agency's costs. He said, if he remembered correctly, that they started off with the highest level as being over \$2,000. With 19 licensees at a little under \$600 each, that would give the agency about \$10,000 revenue over a year, which would equate to about 1/5 of an FTE. He said it would require much more work than that to regulate this activity. Just running the paperwork for doing the licensing would use that much. He said Division Director Winslow said that the field would like to have more of these services because it does help them with their work.

Chairman Ludwig said that Mr. Corazine was suggesting that money will be saved in another area. **Director Bishop** said that savings had been factored in, but he could not give them the exact amount that was factored. The staff calculated a need of about \$35,000 to fund the program. They had three levels; one at \$2,000, one at \$1,000, and the low level at \$500, plus a fee for the contracts. Two meetings ago someone had raised the question regarding their fee levels. The staff then went back, re-evaluated it, and lowered the fee, including the factor of increased efficiency with this type of service.

Mr. Corazine said that Director Bishop was not taking into account other factors such as looking for revenue stream -- \$10,000 to spread over 19 people. He thought the staff was not looking at the good that an expanded system would do for the Gambling Commission. He said it would cost the state less to go out and look at 19 people than looking at 2,400 licensees and suggested he might not be looking at the whole picture. He said 19 people could be monitored with 170 people out in the field without any added people and would reduce the workload. He said the costs would go down significantly by having the game services.

Chairman Ludwig said that assumes that all operators are using a service like this. **Mr. Corazine** said it would make sense to encourage licensees to use the dead game services. **Chairman Ludwig** asked what he would

suggest as the license fee. **Mr. Corazine** said they might get to the \$575 level in three years after the industry had grown, but it should not be forced. They should be given an opportunity to get involved, get it under control, and then start increasing fees. **Chairman Ludwig** asked if were fair to ask how many operators he had as customers or clients. **Mr. Corazine** said he did not want to give out that information because of competitors who might be present in the room. He said if an employee or accountant has three customers and each customer is doing 50 games a month and they are charging \$3 a game, they are looking at \$150 from each customer. A person must have more customers just to generate enough revenue to have a warehouse and a truck. **Chairman Ludwig** asked if changing the price structure from \$3 to \$4 would create a burden on his customers. **Mr. Corazine** said they would run into a lot of psychological resistance because of raising the price. There is a lot of training to do and there aren't enough people who like to do paper work. He must train someone internally on how to use a scale properly and how to reconcile reports.

Commissioner Heavey asked Mr. Corazine if he had any documentation to challenge the fee schedule established by the Commission. **Mr. Corazine** said he thought he had just outlined it. **Commissioner Heavey** said he wanted documentation and that it was the Commission's job and the staff's job to have adequate licensing fees so they don't subsidize businesses. **Mr. Corazine** asked Commissioner Heavey if he did not accept his analysis about three customers. **Commissioner Heavey** said that was a verbal analysis without the benefit of documentation. **Mr. Corazine** said no, he doesn't have written documentation with him.

Chairman Ludwig asked how many services suppliers were present. There were two in the audience.

Marco Courones, owner of American Pull Tabs, said it was his opinion that Mr. Corazine was adding more regulation and taking away an operator's opportunity to do something himself to save some money. He said it was fine to have a game service, but a \$575 license fee is very inexpensive. He said this man makes about \$3 a game and his overhead is his garage. Mr. Courones said he makes \$2.50 a game and his overhead is his many warehouses. But an operator has the right to choose what he wants to do. All this gentleman and other services have to buy is their own scale, and a lot of them say they will get the report back within five or six days. But if there is a theft that night, an operator will catch it if he is weighing the games in the morning, not 10 days later when a service would catch it. He said Mr. Corazine should be free to choose his livelihood, but should not take away the privilege or an operator's opportunity to count and store his own games.

Chairman Ludwig asked if there were any other comments.

Rob Saucier, Mars Hotel in Spokane, thanked the Commission and the staff for addressing some concerns he had at the October meeting and said he is pleased with those changes. He had a couple of things to point out. There was a motion for an amendment to WAC 230-04-119 regarding the sentence, "a gaming services supplier shall not purchase or deliver gambling equipment and/or paraphernalia for an operator." He thought he understood the intent of changing that, but cautioned about choosing words that could be misinterpreted out in the field. He said he thought that the intent was that a gambling services supplier cannot purchase or deliver equipment, but a distributor may. He said there are going to be people with dual licenses or three licenses, and if a person is a distributor and a gambling services supplier, the way this is worded, the agent can say that can't be done because they are a gambling services supplier, even though they have a distributor's license as well. **Ms. Winslow** said the entire sentence could be deleted because the way the rules are actually drafted, a gambling services supplier would not be able to purchase.

Commissioner McLaughlin accepted that change and amended her motion; **Commissioner Herbold** accepted the change and amended her second to the motion.

Mr. Saucier referred to WAC 230-12-223 -- Prohibited Practices. He said he is aware that a lot of this is housekeeping and not a change in policy, but he would like to ask the Commission to change policy in this case. He read the WAC, "No person, association or organization shall operate or conduct any gambling activity authorized on or with any leased premises if rental under such lease is paid wholly or partly on the basis of percentage of the receipts or net profits to rely from the operation of such gambling activity." He said that had been the policy of the Commission for a long time. There is an exception later in the rule that pertains to commercial amusement game operators when they operate within a shopping center, because it is quite common that in a shopping center they pay based on their gross. He understood that the intent of this was so there was

no hidden ownership or hidden beneficiary of a gambling activity and he supported that; however, in the real business world, business decisions must be made or they get involved in business contracts where percentages are a part of that. This happens in every type of business.

Mr. Saucier said that in his establishment a limited partnership owns the property and the gambling license. He said he formed a new LLC company that will operate the facility, but they wanted, as part of the lease agreement, a percentage rent to pay to the partnership. He wanted to know if this could be done somehow so there was proper disclosure to the Commission, such as copies of the contract and possibly if a person were receiving percentage rents, then they might need to be licensed or at least known to the Commission. He has a copy of the lease agreement that his attorney drew up and he realized only yesterday that it would be illegal for them to enter into that agreement even though it was two entities that he controls himself. His request was that this particular item be deferred until the next meeting, or if there could be some sort of solution to where they could allow people to enter into these agreements, if known to the Commission.

Chairman Ludwig asked about adding a provision to the first sentence that said, "without express approval or permission of the director."

Commissioner Forrest said he was hesitant with making freelance changes on a fairly complex issue, having been burned a few times in the past in the courtroom trying to do that. He would be more inclined to take it as it was and it could always be amended at a later date, because to draft an exception that would deal with a particular problem without either going too far or being so restrictive that it doesn't meet this, then it could be pretty complicated. He was inclined to think it should be accepted in its present form and then let the staff work out something in conjunction with the proponent, a possible amendment to deal with that situation.

Director Bishop said at the end of the sub paragraph, one of the rules references RCW 9.46.120(2), which prohibits leases that are based partially or wholly on results of any gambling activity. It is a statutory restriction that they have quoted. **Mr. Saucier** said he was not aware of that and he withdrew his request.

Chairman Ludwig asked if there were any further comments. No one came forward. He restated the motion that had been amended to delete the entire sentence remaining in paragraph five and then renumber the paragraphs accordingly. *Vote taken; motion carried with five aye votes.*

Chairman Ludwig said now the entire rule packet is before the Commission.

Commissioner McLaughlin moved to approve the gambling services supplier rules in items 3 (a) through 3 (j), that were amended with the prior motion. **Commissioner Heavey** seconded the motion. **Chairman Ludwig** asked if there were any other discussions or questions. He said that was with the fee as developed by staff of \$575. *Vote taken; motion carried with five aye votes.*

PETITION TO AMEND RAFFLE RULES **by JAMES H. WILLIAMS**

Amendatory Section WAC 230-08-070 – Raffle records
Amendatory Section WAC 230-20-325 – Manner of conducting a raffle

Ms. Tellefson said these two rules were the result of a petition by James Williams (who is not present) and are up for final action this month. Mr. Williams proposes to allow discounted raffle schemes where one free ticket is given away and the licensee would determine the discount scheme at the time that the raffle is conducted. The staff recommended denial of the petition because of the inability to account for the number of raffle tickets sold and the price. The control structures were not apparent in the rule and there was no way for the staff to know the price of a ticket. Auditors would have to look at individual ticket stubs to determine what the price was and this type of control structure would make fraud or theft easier. Director Bishop sent a letter to Mr. Williams with a couple of alternative proposals, and that letter was placed in the commissioner's handout packets.

Ms. Tellefson said Mr. Williams did not respond, so this is not being proposed formally as an alternative, but the letter is included to show that there were a couple of alternative proposals given. One alternative was that this type of scheme could perhaps be conducted in a members-only environment as long as the price of a single ticket was \$1 or less. The second proposal in Director Bishop's letter was if they had a single discount scheme where the amount of the discount was set prior to selling any of the tickets and the tickets were bundled into booklets and each booklet contained a control number on the front as well as the scheme set forth within the booklets and the number of tickets in the booklet corresponds to the scheme. For example, if there were 10 tickets at a \$1 a piece or 10 for \$9, that would be printed on the front and would be a way they could account for it a little better. The staff is not proposing any of the alternatives because there was no response from Mr. Williams.

Commissioner Forrest suggested waiting to see if Mr. Williams and his group either could accept this or work out some further refinements and recommended setting it over until January. He moved to continue the matter until the January meeting to see if the industry and staff could agree on a way of selling these tickets at a discount. **Commissioner Herbold** seconded the motion. **Chairman Ludwig** asked if there were any people who wanted to comment on this proposal. No one came forward; public comment was closed.

Vote taken to defer the decision on Mr. Williams' petition to the January meeting. Motion carried with five aye votes.

Ms. Tellefson asked if the Commission would like to see the staff bring this forward as a staff proposal separately or to wait and see if Mr. Williams would like to pursue this further. **Chairman Ludwig** said that under tab #24 where Mr. Bishop's letter to Mr. Williams is included, there is a draft for discussion. **Director Bishop** said this was discussed among the WSGC staff, and he feels that the discussion draft covers most of Mr. William's request, as well as providing a little bit more flexibility at the \$25 level. It also gives him almost complete freedom among their own groups as long as the wager does not exceed \$1.

Commissioner Forrest said he thought that he should have a chance to respond and if he doesn't, then bring forward the drafts the staff has. There still may be a little bit of language needed, and the Commission wants to help them use this way of selling tickets, but the Commission should be sure that it doesn't interfere or detract from the its ability to control and audit the receipts. **Director Bishop** concurred with Commissioner Forrest and said he would call Mr. Williams.

LICENSE FEE INCREASE RULES

Amendatory Section WAC 230-04-202 – Fees—Bona fide-Charitable nonprofit organizations
Amendatory Section WAC 230-04-203 – Commercial stimulant and other business organizations
Amendatory Section WAC 230-04-204 – Fees - Individuals

Chairman Ludwig said these rules were carried over from the last meeting. **Ms. Tellefson** said these three rules are up for final action today and are consistent with limitations and requirements that were set forth in Initiative 601. It's a 4.05 percent license fee increase and is consistent with the budget proposal that the agency put forward this year. The staff is recommending that the rule be adopted today but that the implementation date be June 30, 1998, in order to give about a six-month break for the licensees, and yet the agency would not be penalized when going forward with a budget proposal the following year. If they don't ask for the increase, then they are limited to the baseline currently in place. The budget is relatively healthy at this time. There was one minor housekeeping change in item 5 (c). The staff added back the Class "A" and "B" designations to the non-key and key employee designations just to clarify it so there wouldn't be any confusion for the licensees. The staff recommends adoption of this package for a June 30 implementation date.

Chairman Ludwig called for public comment; no one came forward. He said he understood that no one wanted fee increases, but he was also sure that no one imposes delaying the effective date.

Commissioner Heavey moved to approve rules 5(a) through 5(c) with the buff colored amendment in the packet; **Commissioner McLaughlin** seconded the motion. **Chairman Ludwig** called for any further discussion or questions. *Vote taken; motion carried with five aye votes.*

PETITION TO AMEND PUNCHBOARD/ PULL TAB RULES
by DENNIS ZABORAC

Amendatory Section WAC 230-30-070 – Control of prizes – Restrictions – Bonus prizes – Displaying – Procedures for awarding
Amendatory Section WAC 230-30-080 – Punchboard and pull tab series restriction – Prizes, size of game, and location of winners

Ms. Tellefson said Mr. Zaborac was not present, but this petition was filed a couple of months ago to reduce the 50 percent markup on merchandise prizes. At this time, staff isn't taking a position. It is just on the record for discussion and public comment. No action is required.

Chairman Ludwig called for discussion or questions by the Commission.

Commissioner Heavey said if a value is established for the prize at the amount actually paid by the licensed operator, one can reasonably conclude that operators are going to pay different amounts for the same type of prize. He wondered if that created any additional regulatory problems if the plus 50 percent were deleted. He wondered if they would be in the same regulatory posture. **Director Bishop** said it made no difference. Staff must check the invoice in any case. Currently, they check their invoice and then multiply it by 150 percent. **Commissioner Heavey** wanted to know what the justification of the additional 50 percent was. **Director Bishop** said that initially there was a problem with the staff trying to value prizes. The operator does have additional cost for merchandise. They have to pay state sales tax – so that's 8 percent that they have to pay on every chance over and above.

Commissioner Heavey asked whether the amount actually paid would include the sales tax. **Director Bishop** said no, it wouldn't. They purchase it at wholesale and actually have to pay a retail sales tax on the costs that are the gross receipts. That is a Department of Revenue rule that has been in effect for 20 years or so.

Commissioner Heavey said that if they change that to the amount actually paid plus applicable tax, that would take care of that problem. **Director Bishop** said they would still have some additional costs for adding the flares that they have to make up, for the wear and tear, and handling. There is an argument for some markup. He did not know if there was a valid argument in today's environment for 50 percent. **Commissioner Heavey** said Mr. Zaborac's comments seemed to be valid in that it does actually change the percentage pay-outs substantially. **Director Bishop** said that 60 percent drops it to 40. The effect, if the additional costs of sales tax and other items are not factored in, based purely on what is paid for a prize, relates to a 40 percent pay-out.

Chairman Ludwig said it occurred to him that the Commission was dictating to a particular type of business how much their profit could be on items that they bought wholesale, and he didn't think that was the Commission's or government's role, at least in principle.

Commissioner Forrest said he felt it was appropriate because the basic theory of pay-out was that the player gets a fair return overall from playing the games and the operator gets a fair profit from the fact that the odds are in his favor. He said it seems to him that putting some reasonable limit, such as 20 percent, would mean that they would not be subsidizing or encouraging prizes versus cash or vice versa. He thought that should be the operator's choice. What's more attractive is the player's choice – if they want to play cash games, great. If they like some merchandise up there, that's great. But the scales should not be weighed in favor of merchandise because that's more profitable to the operators. It seemed to him what they wanted was to come as close as they could to a neutral position and, taking into account sales tax and some little problems, 20 to 25 percent would be fine.

Chairman Ludwig said maybe the commissioners could help him out with whether the players playing for \$10 cash prize or a hunting knife that would sell retail for \$10 are being treated fairly no matter what the operator might buy that hunting knife for. **Commissioner Heavey** said yes, except that a hunting knife of a certain brand can be purchased at K-mart for "x" number of dollars, and if it were purchased at an upscale store, that hunting knife would cost "x" plus. He wondered what the real value of the knife was. The real value of the knife is what the operator paid for it – that's the real value of that knife, not some artificial value that was set on it based upon what somebody could buy it for at a particular store. He thought Mr. Zaborac had made a valid point that whether

the operator was increasing the percentage other than what it actually cost them, they were penalizing the player because the player was now being paid off with something of less value than what it cost the operator. He knew what \$10 cost the operator -- it cost him \$10.

Chairman Ludwig called for any other questions or discussion from the Commission.

Commissioner Herbold said that, subject to the information that they hear from the people in the audience at the next meeting, if the staff is so inclined, it would be helpful to her if they had a recommendation in terms of what amount of a markup would be appropriate.

Ms. Tellefson said the staff had planned to do that for next month.

Bill Tackitt, said he has a gambling license for Buzz-Inn in the Everett area. He does a large amount of games with merchandise prizes. He said the reason there weren't more merchandise boards in play is because they were labor intensive and expensive. He used the example of having a BBQ as a prize. To make them enticing he must put them together which takes about two and a half hours and he must hire someone to deliver them, put them on display, and make up a flare to match the game he puts them on. When he has to run this game he has completed, he then has one BBQ left. He must then either buy two more – he can't return the one to the store because it might have smoke damage or something. More people aren't doing this because of the work and expense. He makes it work for him because he puts his bicycles together, he combines them, moves them around to different places and it can be fun, but it is more of a stimulant, not a profit in itself. These rules have been in place since 1974, and he hasn't seen any problems in that time. The industry is proof in itself that given the guidelines and the opportunity they can make it. In the City of Everett, if that \$499 BBQ takes in \$1200, he pays 8.3 percent on \$1200 plus 4.5 percent to the city on the \$1200.

Commissioner Heavey said he understood the 8.3 percent, but he didn't know how the gambling tax was distinguishable from any gross receipts of any board whether it were a merchandise board or whether it were a cash board. He wondered what the difference was. He said he understood the sales tax and he thought that was legitimate. However, it was not logical to say that they were paying a gambling tax on a merchandise board that he would pay on a cash board so, therefore, they were entitled to an extra markup. **Mr. Tackitt** said his point was that a merchandise board not only costs him \$500, but is very labor intensive and he then must also pay 13 percent tax. It would be much easier to just put up a \$500 bill.

Chairman Ludwig asked if merchandise boards for pull tabs are popular. **Mr. Tackitt** said they can be. Go carts have been very successful for him around Christmas time. If they are of high quality, and displayed and rotated properly, he does well with them.

Commissioner Heavey asked if there were a significant difference between the profits he made on a merchandise board and a cash board figuring his time in at reasonable value, and so on. **Mr. Tackitt** said he operated his business with his sister and a close family friend who both said they should just get out of the merchandise business because it was more trouble than it's worth. They have \$20,000 in inventory sitting out in a barn and want him to get rid of it. He thinks it is a stimulant, but he does not think he is making a lot more money on his merchandise versus cash pull tabs.

Chairman Ludwig asked if his business was in connection with a bar. **Mr. Tackitt** said yes, with the Buzz-Inn Steak Houses.

Mr. Corazine said he had no involvement in merchandise versus cash tabs, but he thought that, with Director Bishop's assistance, they could enlighten the Commission about just exactly why the 50 percent rule was put in place. Years ago, the merchant had to go out and buy the prizes and it was considered that, if he had to leave his place of business and go to a retail store and buy the prize and bring it back and make a flare out, that he should be compensated in such a manner. That was why the 50 percent rule was put in place. **Director Bishop** said that was part of the reason. **Mr. Corazine** said that was the logic years ago. From a game service point of view, they watch these numbers because they have to make out a separate report on merchandise. He said these people aren't making any more money on merchandise than they are if that area was devoted to cash pull tab bowls. The merchandise must be displayed and that takes up valuable room. But they could place four cash

bowls or five bowls in that same place and make a lot more money. It's a seasonal type of thing, typically around holidays, when merchandise is more attractive. That rule was put in to compensate the tavern owner for going out and buying the merchandise. Since then, the whole industry has changed. He said he is surprised that there are not more distributors here complaining about this proposed rule change because they are making a lot of money servicing the taverns with merchandise now. They buy at wholesale high quality items that the merchant can't get on his own. They buy and sell below cost in quantity and they are selling it to the tavern owner at a lesser amount than the tavern owner can go out and buy it elsewhere. Therefore, the 60 percent rule fits. If he went down and bought that same hunting knife down at the store, it would probably equate to exactly what the flare says.

Mr. Courones, American Pull Tab, said that to obtain quality merchandise, they go to trade shows in Atlanta, New York, Los Angeles, Las Vegas – wherever they can find something that his customers won't find at Costco or other places they patronize normally. That is quite an expense, but he wondered who was determining what wholesale and what retail is. A person can buy something at the The Bon Marche for \$12 and go to Nordstrom and buy the same thing for \$18. That 50 percent is the extra cushion that the operator and the distributor need. He hires three people just to prepare merchandise boards. The operators hire people to audit them, display them, and to make it appealing. What it amounts to is a couple may go into an establishment and maybe the man wants to play for the \$500 bill and maybe the lady wants to play for the necklace or a can of peanuts. It is quite a stimulant because people don't want to just go into bars and drink. This is their Elks Club. What it amounts to is that it is an industry that no one has been injured with the existing practices. There are hidden costs, such as the paper and ribbon to wrap the prize. He doesn't think the operator really nets more than 20 percent on a merchandise board when it is all said and done. If he nets 17 percent after taxes on a money board after taxes, that is pretty good. He doesn't think the system is broken; it doesn't need to be fixed.

Director Bishop said he understood Mr. Tackitt's complaint about the time it takes to put the prize together, but he wondered how that would apply to the distributor. He asked Mr. Courones if he sells at whatever price he sets. **Mr. Courones** said they buy it and then factor in their costs of travel, the salesmen, the wrapping costs, and make sure they are within the gambling regulations of the 60-40 percent. He said the expenses for each were basically pretty much the same. **Director Bishop** said if he delivers a product to Mr. Tackitt at \$100, he would have marked it up appropriately. **Mr. Courones** said they mark it up about 20 percent or so. **Director Bishop** said then he marks it up about 50 percent and he didn't have to go out and get anything in that case. **Mr. Courones** said it all depends if he finds something. He's got the opportunity and the privilege, as any operator does, to go find their own merchandise. It is not restricted to distributors only. It is just not paying \$10 for that knife; it's preparing that knife to make it appealing.

Commissioner Heavey asked if this rule provided that if the distributor buys an item, marks it up 50 percent, sells it to a punchboard operator and that punchboard operator marks it up another 50 percent. **Mr. Courones** said he did not know. **Director Bishop** said it did not, but there is no limit on what a distributor can mark it up. He sets his own price for selling the product. **Commissioner Heavey** said at some point the market has to be relied on to do something. **Mr. Courones** said the market definitely dictates the price. **Commissioner Heavey** said but when it comes to the player, there's a little different psychology involved. **Mr. Courones** said he had a warehouse full of duds. **Commissioner Heavey** said somebody is buying from him based upon the idea that this is going to be good for business, etc. When he plays that punchboard he plays because he's going to get something for nothing. It's a little different psychology. **Mr. Courones** said he could win the knife for 10 cents or whatever. He said he has about \$10,000 worth of candles he would like to sell to somebody.

Greg Murray, president of the WCCGA, said his group opposes the petition and would like to see the rule stand as it was written.

Chairman Ludwig said these comments were very helpful to the commissioners and was disappointed that Mr. Zaborac was not present to give his views.

Mr. Saucier said the percentage of merchandise compared to cash prices was very small. He said the 50 percent market was not making anyone rich if they were concerned about the less than 60 percent pay-out. The top ten operators of the state typically have the highest payouts – that's why they are the top ten. Very rarely are they hovering around 60 percent – they are in the 80 percent payouts. It is a competitive nature; the players do

know the difference. One of the members of the Washington State Licensed Beverage Association, who owns D. J. Murphy's in the Olympia/Lacey area, has a relative who owns a crab boat on the Oregon coast. Twice a week he drives down to Oregon and buys crab from him, ships it back, and sells it in his restaurant. At his bar he has a punchboard, and for \$10 a punch someone can win one of these crabs. He sells more crab than the grocery stores – he's the crab king of the County. If this rule passes, the Commission will be putting him out of the crab business because he will not be willing to continue all the work and expense. There have been no complaints other than from the petitioner.

Chairman Ludwig asked if there were any other comments and reminded the audience that this item will be on the January agenda and comments could be taken then.

RECESS at 10:55 a.m.

Called to order at 11:05 a.m.

PUBLIC CARD ROOM EMPLOYEE RULES

Amendatory Section WAC 230-02-415 – Public card room employee defined
New Section WAC 230-02-425 – Licensed card room key employee defined

Ms. Tellefson said these two rules were up for discussion. They correspond to the house banked pilot test program. One rule defines what a key employee is and adds it to the definition of card room employees. The key employee is someone who is involved in the management or accounting control structures in card rooms that operate house banked or player-funded banking. Staff recommended further discussion.

Chairman Ludwig called for discussion or questions.

Commissioner Herbold said it seemed that the definition in the new section, especially under paragraph two, was pretty much the same as the additional language that was going to the amendatory section. She asked if that implied that a public card room employee was always a key employee and vice versa. **Ms. Tellefson** said no, a key employee is a separate designation under public card room employee under subsection 11 in Item 7(a). Those are card room employees who work in the house banked or player funded banking arena who have something to do with the control structure within that organization. There is a different level of license that is required.

Ms. Winslow said anyone involved in player-supported jackpots would be considered a key employee.

Chairman Ludwig said the new section talks about responsibility for managing affairs of Class "E" or Class "A". He wanted to know why it was limited to just those two classes. **Ms. Tellefson** said Class "E" was a general fee to play license in a private for-profit card room and Class "A" is a nonprofit card room license where a fee to play is charged. Those are the higher risk areas.

Commissioner Forrest said he's still unsure as to why they need two different definitions of the same word. **Ms. Tellefson** said that was a good point and perhaps it was not required in both places because it is repetitive. Typically, she said they have a definition section that is in the 02 section.

Director Bishop said he had looked at it and the intent was to identify an additional license class. He said he thinks next month they will come forward with a modified subsection 11. This definition would come out of the public card room employee rule to remove the redundancy. While "key employees" are public card room employees, they are a separate category that has a higher level of responsibility. The key employee definition will be expanded to include a list of examples of those people such as pit bosses, security, people that handle money, cashiers, and other types of employees that are important parts of the casino control system.

Ms. Winslow said one of the things that came out of yesterday's study group session was that staff would prepare an addendum to Appendix C that would list all of the applicable key employees so they wouldn't necessarily have to list all those key employees in the rule because it could change over time. They may find that as the test reaches its conclusion that they may want to eliminate some of those people or add additional people

to that list so it would be better not to list all of them in the rule.

Commissioner Forrest said it seemed that one definition of key employee was all that was needed. **Ms. Tellefson** said the staff will bring back another proposal for the commissioners next month that will streamline it.

Chairman Ludwig said this would be on the agenda for final action in January.

BINGO GIFT CERTIFICATE AND MERCHANDISE RECEIPT RULES

Amendatory Section WAC 230-08-080 – Daily records -- Bingo

Amendatory Section WAC 230-20-102 – Bingo prizes – Records of winners

Amendatory Section WAC 230-20-115 – Gift Certificates – Requirements

Ms. Tellefson said these rules were up for further discussion and had been discussed with the bingo study group. They have to do with bingo record keeping and accounting records. Items (a) and (b) allow a licensee to account for merchandise prizes of \$15 or less by using a merchandise prize receipt log as an alternative to the duplicate copy method. Item (c) allows alternative methods of accounting for bingo gift certificates that are purchased but never redeemed. It is just a different accounting structure. The staff recommends further discussion.

Chairman Ludwig called for any comments; no one had any. He said this would also be on the January agenda.

INTEREST IN SEPARATE BUSINESS RULE

Repealed Section WAC 230-30-220 – Interest in separate business involving punchboards and pull tabs at a different marketing level prohibited.

Ms. Tellefson said this was up for discussion and possible filing. It would repeal WAC 230-30-220 that prohibits having an interest in separate businesses at different marketing levels. The staff was bringing this forward to have some substantive discussion about the issue. They have had further discussions among themselves and next month they plan to bring back a new rule that would not prohibit altogether owning an interest in separate businesses but may prohibit certain activities. For instance, a distributor who was also an operator couldn't sell to himself. They were going to try to pinpoint the specific areas of risk and bring those forward for discussion and see if they could come up with a policy that's consistent and makes sense.

Commissioner Forrest asked what the original purpose behind the rule was. **Ms. Tellefson** said it had to do with collusion. If a distributor sells to himself, he could theoretically buy pull tabs that aren't stamped with Washington stamps, he could sell it to himself, he could defraud players and no one ever accounts for the game so that game could essentially go untracked. It goes back to New Jersey days, too, and the idea of influence and control of certain aspects of the industry over other aspects of the industry, and trying to make sure that there is integrity in those different levels.

Commissioner Forrest asked if it was anticipated that a number of people were going to want to take advantage of this change of rule to have joint ownership. **Ms. Winslow** said she believed there would be quite a few distributor representatives who may want to get involved at the operator level. There might also be some distributor licensees who may want to get involved at the operator level, but not too many manufacturers, other than the current situation where they have some distributors that are also manufacturers. She was unsure of the actual numbers.

Commissioner Forrest asked if this were a response to an industry concern or if it were a staff-generated idea trying to get rid of what was thought to be an outmoded requirement. **Director Bishop** said it came about because every time the discussion took place regarding the separation of duties, the question "Well, why are we doing this?" arose. He went back to research this rule, which was in the first group of rules ever passed by the Commission. There is no testimony in the minutes regarding intent. It was the overall strict environment that the first Commission wanted to have, especially over the manufacturers and distributors – to keep that separation. In the 1997 environment he felt if they were going to discuss this every time something came up, that maybe it needed to be looked at from a policy standpoint and shake it out completely. Or, maybe do away with the general requirement and bring it to 1997 standards rather than throwing everything out.

Chairman Ludwig called for further discussion. No one came forward.

Commissioner Heavey moved to file this rule for further discussion; **Commissioner Herbold** seconded the motion. **Chairman Ludwig** said it had been moved and seconded to file proposed rule 9a for further discussion. *Vote taken; motion carried with five aye votes.*

Chairman Ludwig said it would be filed and on the agenda again in January.

COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION

COMMISSION MEETING SCHEDULE: FREQUENCY AND LENGTH

Chairman Ludwig said this topic was discussed briefly in Leavenworth last month. At that time, the Commission encouraged anyone affected by the meeting schedule to provide input or comment. He had received just one verbal comment yesterday and it was still being discussed and various options were being considered. When the commissioners discussed this yesterday, the impression he got was that any change should be considered carefully, especially because in the next few months they would be reviewing a lot of public card room contracts. Nothing had been decided and they were still waiting to hear and he wondered if anyone in attendance had any comment to make about whether changes should be made, and if any, what kind.

Greg Murray, WCCGA, said his group discussed this at their meeting last night and they felt that the current schedule allowed them to have regular contact with the commissioners and with Commission staff and they felt that continuing that schedule was very valuable for them – to have regular input on regulatory issues and to make sure they were on top of things. One alternative that they felt might be practical if change seemed necessary, would be to have nine meetings a year, and to have three and then one off and then three more and one off and then the final three. But they were in favor of continuing the schedule as it was at this point.

Chairman Ludwig said he had also thought about skipping maybe two more meetings to see how it works. They miss a winter month in December. They might skip a summer month when it is vacation season for a lot of people, including staff and commissioners, and maybe consider skipping one in the spring as well.

Commissioner Forrest asked if the staff had any feelings about this.

Director Bishop said that, from a purely selfish standpoint, six meetings a year would reduce the staff's workload. The staff begins preparing for the next month's meeting before they are finished with that month's meeting. The down side is that they cannot reduce all the work – they still have charitable nonprofit certifications. They have planned over the year for eleven meetings in which 44 to 50 are done in a year. If they go to every other month, that means that would have to double that to eight per meeting to get them taken care of. And if there were three appeals in one meeting, it would really turn into a lengthy meeting. Right now, with a new director and card room contracts to consider, the meetings should remain monthly for awhile, but nine would be an attractive alternative and would give the staff a little more time to prepare for each meeting. For now, more meetings is beneficial to the staff, too, and there is a new director who is learning together with the commissioners. The staff needs to get together more than every other month. Work with the licensees has improved so much over the last five, six, seven years that the relationship has to do with the meetings they have. Nine meetings would certainly be an attractive alternative to look at both sides of it.

Commissioner Forrest asked how this would affect rule changes. **Ms. Tellefson** said that really wouldn't be an issue because once a rule was published in the state register it had to be out for 30 days. It would just be up to the Commission if the commissioners felt the amount of public comment had been sufficient, if they wanted to carry it over more. It was fairly flexible.

Commissioner McLaughlin asked if there had to be a third meeting for discussion on rules. **Ms. Tellefson** said no, it just had to be filed for further discussion and take a final vote. **Director Bishop** said it's a time period as opposed to number of meetings.

Chairman Ludwig said Director Bishop commented on having nine meetings a year. What about the possibility of seeing how things work by skipping for this coming year one more month in addition to the December month, like June or July? **Director Bishop** said that would probably be very helpful, at least in trying to get into a new schedule. Over the next six to eight months, they will have the card rooms to deal with. If even a third contract on the list of 60 comes forward, that means that there will be four or five of those every month.

Commissioner McLaughlin said it has been her thought that most vacations come in the months of July, August and September and wondered if one of those months could be cancelled, so that they know that the month of August is free, for example. **Director Bishop** said he would personally select August.

Commissioner Herbold said in looking at the schedule, they have contracts with many of the hotels and Susan Green is in the position to determine which ones would involve a penalty if the Commission cancelled and which ones wouldn't. She said they had discussed the possibility of canceling the one in July, which they can cancel up to May 8, 1998, without penalty, as she understands it. That one would have been held in Leavenworth and the Commission was just there last month, so maybe that one would be an appropriate choice.

Senator Schow said that as a legislator, he doesn't need any more meetings, but he feels it is important the members of the industry have the opportunity to meet with the Commission as many times as they do in a year and if it is cut down, because they have their own businesses to run, if they miss one meeting, it might be two months before they can have the opportunity to meet with the commissioners or comment on something, and some of the good communication might disappear. So they should be careful to not take away the opportunity for the people in this industry to have access to the Commission.

Chairman Ludwig said this is something that has been considered from time to time and comments from those who attend the meetings and who might be affected are very welcome.

WCCGA 1998 LEGISLATIVE PROPOSAL

Greg Murray, WCCGA President, said he came before the Commission in Leavenworth last month to ask the Commission to lend its support to their efforts to bring satellite bingo to the state of Washington. As he mentioned, they had a bill that went through both the House and Senate and had overwhelming support to allow the charitable bingo operations in the state to join together to play a linked game that would allow their players to play for a combined pool that would be larger than a normal jackpot. This is being done successfully in Alberta and has been a real benefit to the charitable organizations there and they feel that it would be a stimulant to their games and help give them one more thing to raise those extra dollars they have seen go away to support the charitable causes in the state.

Mr. Murray said the bill did not get signed by Governor Locke. Over the summer they had subsequent meetings with the Governor's staff and they have indicated that if they have the Commission support that they very likely would support the bill this time. They feel it is an important step and they encourage the Commission to take the step to formally support their efforts to achieve satellite bingo. They would further ask that the Commission contact the Governor's Office and indicate their support to him.

Chairman Ludwig asked for staff comments on this.

Ms. Tellefson directed the Commission to a letter in the handout packet that was written by then-Director Miller to Governor Locke. The letter indicated that the director made his support for this concept on behalf of the Commission last year. **Director Bishop** said he remembered the discussion and the director was directed by the Commission to write the letter.

Commissioner McLaughlin asked if this would be similar to the electronic bingo games that are linked in the casinos. She saw one at one of the casinos where they said that the game was being played in Atlanta. **Mr. Murray** said it would be similar but the difference would be that it would only be charitable games here in Washington. He thought that one of the other factors that they were concerned about is that the company they

have had discussions with, and they have had discussions with Commission staff also, about doing the business side and support and T. V. work on this are feeling pressure at this point. They're launching a national game with the tribes and because they have an agreement with them, they will not do that in the state of Washington unless they are unable to get this passed and it will go to the tribes if they are unable to have this opportunity.

Commissioner McLaughlin asked if it were already there. **Mr. Murray** said no, not this particular game they were talking about.

Director Bishop said the game that was proposed would be somewhat different than that. That's an ongoing game that was played in real time almost. The games proposed under the satellite scenario would be one game a night or something along that line – not a real time game. Everybody would be playing the same game at the same time in the different halls. **Mr. Murray** said it was real time once a day.

Commissioner Heavey moved to have Director Bishop express the Commission's formal support of the concept in a letter.

Mr. Murray encouraged Chairman Ludwig to join in signing the letter. He said in his conversations with the Governor's staff there was a great deal of confidence expressed in Mr. Ludwig's judgment. He encouraged his participation in this.

Director Bishop said he could draft a letter for Chairman Ludwig's signature.

Commissioner McLaughlin seconded the motion.

Chairman Ludwig called for public comment.

Commissioner Heavey said this was a precedent setting move, because the Commission had not supported legislation in the past.

Commissioner McLaughlin said she thought the Commission supported the house banking bill. **Commissioner Heavey** said no, the Commission did not officially support it. Traditionally it had been that the Legislature acts and the Commission implements it without taking a stand on either side of the issue.

Chairman Ludwig said there might be justification for this particular exception because the Legislature did act but the Governor didn't.

Commissioner Heavey said he just wanted to point out that this was precedent setting and it was kind of like when they voted for the Quinault when somebody said it wasn't precedent setting and the next time they met over in Spokane, sure enough, they had a precedent before them. This was precedent setting and he thought they should think about that.

Vote taken; motion carried with five aye votes. **Chairman Ludwig** said he'd be happy to sign a letter along with Director Bishop.

Chairman Ludwig called for any other business or comment that somebody was interested in speaking about today.

Commissioner Herbold said that every month the Commission receives an administrative case update and she was struck by the fact that when there is a settlement reached with these licensees who have violated the regulations, almost invariably there was suspension imposed but part of it was forgiven in exchange for payment of fees that cover the cost of the investigation and then the rest of it was deferred for a period of time. She asked if there were ever a suspension imposed in these cases or were they developing a reputation as a paper tiger because they never suspended anybody – they are just charged the cost of the investigation and then deferred the suspension.

Ms. Tellefson said this was one of the functions within her division. When the agency brought attorneys on staff to do the administrative charges, one of the goals was rather than taking every case to a hearing which was

probably the typical procedure before, they thought they would try to look at cases and see if there was a way to settle them that still provided a deterrent for the future. The ultimate goal was voluntary compliance. There are various ways to provide that deterrent – one might be a fine; one might be reimbursement of costs; another might be a partial suspension or deferred suspension which keeps that hanging over the licensee's head for an additional period of time. Each case is evaluated differently depending on the nature of the case, but if it is a situation where the nature of the charges is so egregious that the person no longer qualifies for a license, then absolutely they would go forward with a revocation in those cases. Most of those would probably end up going to a hearing or there may be a summary suspension first and then a revocation. Generally, if they can reach voluntary compliance through a fine or something else, they will take that approach. It is cost saving for the agency, it's proactive, and they don't typically have a lot of repeat offenders. They don't have too many that are under a deferred suspension who end up violating that.

Director Bishop said the philosophy the agency operates under is voluntary compliance. There used to be a lot of hearings and suspensions, but under the direction of Director Miller, they decided that if their philosophy was truly voluntary compliance, there is more than one way to do it. One is to hit or spank someone or, instead, gain the compliance through training or alternatives. The other part of that is if they have 10 percent of the licensees causing 90 percent of the problems, the other 90 percent is paying for all of that so they said the best thing to do was to get their money back. That would be a consideration. In lieu of that, they always have the option to take a suspension or to pay a fine. They try to get that – in fact probably triple. They do not use it as a revenue source. They are not out seeking fines as a part of their budget. It would be very happy for them if they had no violations during the year that resulted in a fine, but they know that's not going to happen. On the other side of that, if a violation is of an area that it is serious, that regardless of whether they now know the error in their ways or otherwise, that requires a penalty, then they just go forward and they will not settle.

Commissioner McLaughlin asked if the Commission ever received the fine from ACE Novelty; **Ms. Tellefson** said they had received that fine.

Senator Schow said he was looking at suspension as opposed to paying for the investigation or a fine. The Commission staff has done a good job because a lot of people are affected with a suspension. It is not only the operator that is being penalized but it also affects employees and the cities, many of which depend on revenue from gambling taxes to a large degree. He thinks that when the problem can be solved with other than a suspension that is probably in the best interests of all as long as it doesn't get to the point where people ignore this and feel that they get off too easily. He thinks that has not been the case and most of the licensees that he has been aware of that have had a problem have paid a pretty heavy price and to make their employees and the city pay a price on top of that is not necessary if they can find a better way and the staff has done a good job of finding that other way.

Chairman Ludwig said it occurs to him that there was at least one time where a fine was paid to the Council on Problem Gambling. **Director Bishop** said that was a tribal case and the Commission must make sure they are not profiting by penalizing the tribe. That was an agreement with the tribes with compacts that any penalties would go to the Council.

Chairman Ludwig said that was consistent with the policy that was just stated.

Chairman Ludwig called for any other comments.

Ken Higgins, Higgins Enterprises, said his primary objective in working with the Commission is in the gaming industry – the casino and card room part of the gaming industry. He said as he is out in the field doing card rooms he sees problems occurring that he wished to make the Commission aware of that concerned him. He said he was talking with operators and people at taverns and he runs into a product being shipped into this state from Nevada, California that are not licensed manufacturers in this state, are not licensed distributors in this state, and he has to compete with that. He has been licensed over seven years with the Commission. He admires the Commission as one of the finest in the country. He said something is going on out there that is going to turn into a nightmare for the Commission. He said people are building craps tables, 21 tables, and lay-outs in their back yards and in their garages and selling them to card rooms which there is no control on, but he has to be licensed to do it. It does not seem fair. He said since he has to pay license fees he has to charge maybe \$1 more,

whatever. The other thing is drop boxes, poker chips. He can take a place down in a day on most of the poker chips that are in these card rooms today. Most of them can be ordered from the gambler store, by mail order, or out of California from the poker chip company, hot stamp them and go in and lay a place out very simply. This needs to be looked at very seriously. When the card rooms buy from the distributor, licensed by the state, there are controls on this.

Ms. Cass-Healy said there was an amendment passed by the Commission with the card room test package last month where distributors and manufacturers of house banked, player supported, and player funded jackpot games would need to be licensed. That was passed with that package.

Chairman Ludwig said it would appear to be a question of having notice and being able to enforce that. He thanked Mr. Higgins for his comments and suggested he talk to staff when he knew of such problems. He pointed out that he didn't think there was a restriction on a licensee building his own in his backyard.

Mr. Higgins said people are building these to sell to a card room. There is not the quality. He said the gaming industry can be a dangerous situation. He was talking about marked cards, chips or tables, lay-outs and so forth. He said he is a distributor and licensed as a distributor. In doing so, the staff has investigated and given him the honor of doing that and the trust. He buys products from legitimate companies across the country that have to also be licensed. What happens is once they are licensed, those companies can come into this state and sell direct and wonder why they need a distributor. He doesn't want them to be his competition.

Chairman Ludwig thanked him and said he should contact Director Bishop.

Director Bishop said that issue would be discussed more in the separation of marketing levels rule that they filed today for discussion because he can understand the distributor wanting to force this, but it has never been the policy of the Commission to prohibit a manufacturer from selling direct or from getting their own distributor's license. But that is something that should be discussed.

Public meeting adjourned.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant

